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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

BNSF RAILWAY COMPANY, on
behalf of THE UNITED STATES OF
AMERICA

Plaintiff,

vs.

THE CENTER FOR ASBESTOS
RELATED DISEASE, INC.,

Defendant.

Civil Action No.: CV-19-40-M-DLC

RELATOR'S TRIAL BRIEF

Relator, BNSF Railway Company ("BNSF"), by and through its attorneys of record, Knight Nicastro MacKay, LLC, hereby submit its Trial Brief.

ANTICIPATED LEGAL ISSUES

One of the central issues in this case is whether a B-Reader interpretation of a plain chest x-ray noting an abnormality—by itself—is a “diagnosis” under 42 U.S.C. § 1395rr-1. The meaning of the requirements for Environmental Health Hazard Medicare eligibility established under 42 U.S.C. § 1395rr-1 is a purely legal question that this Court must decide.

Ultimately, whether “B-Read Only” claims are “false” under the False Claims Act depends on the Court’s interpretation of the statute. Relator previously explained in its motion for partial summary judgment and supporting brief why the term “diagnosis” must be given its ordinary and commonly understood meaning. (*See* Docs. 78–79). Relator will rely on that briefing, but it is worth noting here that B-Readers do not believe their interpretations are a diagnosis. Even CARD does not believe a B-Reader radiographic interpretation is “diagnosis” of a medical condition. CARD even tells its patients in written correspondence that a B-Reader interpretation is not—and cannot be—a diagnosis and explains why:

Dear █

You participated in asbestos health screening on 12/11/2014 and at that time you were not diagnosed with an asbestos related disease (ARD). You received a letter at the conclusion of your appointment that informed you that your chest x-ray and CT would be sent out for a second read by other doctors specially trained in reading radiographic images for dust diseases (like asbestos).

One of these doctors did identify a small abnormality on your CT image. It is nothing that has significant health implications nor is it considered a diagnosis of an asbestos related disease.

A diagnosis of asbestos related disease is based on exposure histories, time since exposure, medical provider assessment, and radiographic images. The reader who identified the abnormality did not have the rest of this information.

While the reasonableness of CARD’s interpretation of the statute may be relevant to whether it *knowingly* caused false claims to be submitted, the falsity of the “B-Read Only” claims depends on this Court’s judicial interpretation of the meaning of “diagnosis” in 42 U.S.C. § 1395rr-1.

The Court denied Relator’s partial summary judgment motion on the “B-Read Only” claims because there was insufficient evidence regarding whether the Social Security Administration was fully informed as to CARD’s practices for EHH coverage certification. (See Doc. 131, 5–6). As a preliminary matter, government knowledge of the falsity of a claim is not a defense to liability. Under the False Claims Act: “[t]he requisite intent is the knowing presentation of what is known to be false. That the relevant government officials know of the falsity is not in itself a defense.” *United States ex rel. Hagood v. Sonoma Cnty. Water Agency*, 929 F.2d 1416, 1421 (9th Cir. 1991); *see also United States ex rel. Kreindler & Kreindler v. United Techs. Corp.*, 985 F.2d 1148, 1156 (2d Cir. 1993) (“[T]he statutory basis for an FCA claim is the defendant’s knowledge of the falsity of its claim, see § 3729(a) & (b), which is not automatically exonerated by any overlapping knowledge by government officials.”).

If SSA had approved CARD’s practices, that information would be relevant to whether CARD “knowingly” submitted false claims, but government knowledge that a claim is false does not make the claim any less false.

To the extent SSA's knowledge of CARD's certification practices is relevant, since the Court issued its order, the Social Security Administration has testified through a 30(b)(6) deposition. (Ex. 1: Dep. SSA 30(b)(6) Heather Hillman, May 16, 2023 ("Dep. SSA")). SSA representative Heather Hillman testified that SSA has never trained nor instructed CARD how to fill out an EHH Checklist (Dep. SSA 36:08–37:15), and that the SSA had not approved submitting patients based on a B-Reader interpretation alone. (Dep. SSA 80:12–81:05). In fact, when made aware of the practice in April 2023—for the first time—SSA representatives informed CARD that any patient submitted based on a B-Read alone would be denied if the physician who completed the form did not agree that the patient had been diagnosed with one of the specified conditions. (Dep. SSA 79:12–84:04). The SSA further confirmed that this had always been SSA's standards and practice. *Id.*

Thus, the undisputed (and stipulated) facts establish that:

- B-Readers do not diagnose patients;
- CARD does not believe that a B-Reader interpretation is a diagnosis;
- CARD tells its patients a B-Reader interpretation is not a diagnosis of an asbestos-related disease, nor is it anything that "has significant health implications";
- the SSA did not train or instruct CARD on how to fill out an EHH Checklist;

- the SSA was unaware of CARD's practice of submitting patients for EHH Medicare based on a B-Read alone until April 2023; and
- SSA has never approved submitting patients based on a B-Read interpretation alone when the certifying medical provider does not believe the patient has been diagnosed with one of the specified conditions.

To clarify the issues that will be presented to the jury, the Court should rule before trial begins that an individual must be diagnosed with one of the specified conditions to be eligible for EHH Medicare under 42 U.S.C. § 1395rr-1 and that a B-Read interpretation, alone, is not a diagnosis of such a condition.

ANTICIPATED EVIDENTIARY ISSUES

1. Exclusion of Senator Baucus Testimony

Relator previously moved to exclude Senator Baucus's testimony. (Doc. 86). Relator argued (1) that Senator Baucus was not timely disclosed, (2) that Senator Baucus would impermissibly testify to establish legislative intent of 42 U.S.C. § 1395rr-1; (3) that Senator Baucus lacked the proper foundation to testify about the thoughts and opinions of Kathleen Sebelius or CARD, and (4) that the danger of unfair prejudice substantially outweighed the probative value of Senator Baucus's testimony. (Doc. 86).

The Court held that Senator Baucus had been timely disclosed but reserved ruling on the prejudicial effect and foundation of Senator Baucus's testimony until the testimony has been offered at trial. (Doc. 132, 7–8). It is anticipated that CARD

intends to offer Senator Baucus's testimony by videotaped deposition in lieu of live testimony. Relator thus renews its motion to exclude Senator Baucus's testimony.

Senator Baucus has been deposed twice. The transcripts from both depositions are submitted as Exhibits 2 and 3. Put simply, Senator Baucus can offer no testimony that is relevant to Relator's claims. Relator alleges that CARD violated the False Claims Act by presenting or causing to be presented false claims to the federal government for payment or approval and by creating false statements and records that were material to false or fraudulent claims. Senator Baucus was not involved in the CARD clinic's creation of statements and records or submissions of forms and claims. Nor did he advise CARD as to the meaning of 42 U.S.C. § 1395rr-1. Furthermore, Senator Baucus was not in communication with the CARD (nor the SSA) about how the SSA would interpret, administer or enforce the law. Accordingly, his testimony is irrelevant to CARD's mental state and whether they knowingly submitted false claims.

In response to Relator's motion to exclude Senator Baucus, CARD claimed the Senator would not be offered to establish legislative history (Doc. 100), but that is exactly what he attempts to testify to. As explained in Relator's previous brief, Senator Baucus's testimony about the meaning of the EHH provision of the Affordable Care Act is wholly irrelevant. The meaning of the statute must be interpreted by this Court, not Senator Baucus. The meaning of the statute is subject

to the ordinary rules of statutory construction. The Court must interpret the meaning of a statute according to its plain language. Here, the statute is clear—an individual must be diagnosed with one of the specified conditions to be eligible for EHH Medicare.

If the Court determines that the plain language of the statute is ambiguous, the Court can refer to legislative history to determine the legislative intent of the law. Importantly, the Supreme Court has made clear that the testimony of one legislator is not a proper source of legislative history. *Garcia v. United States*, 469 U.S. 70, 76 (1984). Senator Baucus does not speak for the entire Congress. To the extent the official legislative history is silent regarding the meaning of the EHH provision in the Affordable Care Act, the Court will have to resort to other rules of statutory construction.

Because Senator Baucus's testimony cannot be used to establish legislative history, his testimony regarding the circumstances that led to the inclusion of the EHH provision is also irrelevant. Senator Baucus played a role in enacting 42 U.S.C. § 1395rr-1, but after the statute was enacted, his role was over. It is, and has been, the SSA's role to enforce that law, and it is this Court's role to interpret that law. Senator Baucus cannot tell this Court what the statute means, tell SSA how it should enforce the law, or pardon CARD for submitting false claims under the law. Senator Baucus's testimony is thus irrelevant and should be excluded.

Even if the Court concludes that Senator Baucus may be able to offer relevant testimony, he should nevertheless be excluded from testifying under Fed. R. Evid. 403 because the probative value of his testimony would be substantially outweighed by the danger of unfair prejudice. The probative value of any relevant testimony Senator Baucus may be able to offer is minimal. But the danger of unfair prejudice from allowing Senator Baucus to testify - seemingly give his stamp of approval as a long-time senator - would be substantial.

CARD wants to have Senator Baucus testify as the champion for Libby in the Senate about Libby's health crisis in order to suggest that CARD could not have committed fraud because it purportedly had good intentions. There are obvious problems related to a witness testifying to another's knowledge, intent and good character. The danger of the unfair prejudice that would result if Senator Baucus is allowed to testify is made apparent by the titles for and descriptions of Senator Baucus in CARD's expert disclosures and response brief. In its expert disclosure and response brief, CARD refers to Senator Baucus as "Hon. Max Baucus," "Ambassador Baucus," a "beloved and highly respected 36-year Senator for the people of Montana," and "a champion for Libby." Accordingly, even if Senator Baucus offers some marginally relevant testimony, it should nevertheless be limited – if not outright excluded - under Fed. R. Civ. P. 403.

2. Exclusion of Undisclosed Witnesses

CARD supplemented its initial disclosures on May 8, 2023, to identify three CARD patients as witnesses who had not previously been disclosed. (Ex. 4: CARD 2d Supp. Initial Discl.). Specifically, CARD disclosed for the first time that Gayla Benefield, Jimmie Sevre, and Judy Woller may be witnesses at trial. These witnesses should not be allowed to testify for several reasons. First, they were not timely disclosed under Fed. R. Civ. P. 26(a) or (e). Nor is there any justification for their late disclosure. Finally, none of these witnesses have any knowledge of the false claims at issue in this matter. These CARD patients are not the subject of any false claims allegations. The only reason to have them testify is to have the jury hear potentially prejudicial testimony from those diagnosed with asbestos related disease. But this case is not about the CARD patients who are sick. This case is about the patients who are not. These three witnesses have no probative evidence to offer on that topic. Accordingly, their testimony should also be precluded under Fed. R. Evid. 403.

Benefield, Sevre, and Woller were disclosed for the first time a month before trial. Their disclosures do not even identify the subjects of information each witness possesses, as required by Rule 26(a). Given the late timing, Relator has not been able to depose the late-disclosed witnesses or conduct any other discovery into what their testimony may be. It appears unlikely that the witnesses even possess any relevant

information. They are not the subject of any of the alleged false claims, and Relator does not expect that they would have any information about the medical treatment or diagnosis of any of the patients who are the basis of false claims. It is anticipated that these witnesses are merely intended to offer impermissible character evidence.

The same non-disclosure issue is true for CARD's witness, Jaimie Szeinuk. Dr. Szeinuk never submitted an expert witness report and no expert witness disclosure of any kind was submitted disclosing Dr. Szeinuk's proposed testimony. Whether Dr. Szeinuk is a fact witness or an expert witness, his proposed testimony has not been disclosed absent a Declaration related to Mount Sinai's sub-award, which is now moot. Relator's counsel objected at the beginning of Dr. Szeinuk's proposed preservation deposition taken via Zoom on May 22, 2023. For the same reasons stated above related to undisclosed CARD patient witnesses, Relator also moves to exclude the testimony of Dr. Szeinuk.¹

The Court previously issued an order prohibiting testimony from witnesses who were not timely disclosed unless the failure was substantially justified or is harmless. (Doc. 132 at 4). The Court should apply that order to these late-disclosed witnesses and prohibit Gayla Benefield, Jimmie Sevre, Judy Woller and Dr. Szeinuk from testifying.

¹ We do not yet have Dr. Szeinuk's deposition.

3. CARD's Discovery Violations and Waiver of Attorney Client Privilege

The parties deposed The Social Security Administration through Rule 30(b)(6) on May 16, 2023.² During the middle of the deposition, the SSA deponent testified that CARD had engaged in an email exchange with the SSA in March and April of 2023 regarding whether a patient can be submitted for EHH Medicare based on a B-Read interpretation alone. The SSA witness testimony caused CARD's counsel to produce *in the middle of the deposition* not only the March and April email chain, but a flash drive containing an additional 2,500 emails, between CARD and the SSA dating back to 2010 that had not previously been produced.

While CARD's counsel indicated that he only received the flash drive of emails the day before the deposition, Relator had longstanding discovery requests seeking production of any such emails for years. CARD's response clearly indicates it was on notice of this request since 2021. (*See* Doc. 93-23).

Included in the emails was an exchange between CARD and SSA directly relevant to one of the issues central to this case. Recall that in response to Relator's partial summary judgment motion, CARD contended both in briefing and at the hearing in this matter on September 12, 2022, without evidence, that it was following

² The parties will conclude the remaining 30(b)(6) SSA deposition on the morning of June 8, 2023.

the SSA's *instructions* by certifying "B-Read Only" patients for EHH coverage, and that the SSA was well aware of this practice:

CARD has been doing these environmental health hazard checklists 12 years the way SSA told them to, and obviously there's been many instances where the CARD staff have been informed, you know, the SSA staff, that this was a B-read-only. And so it's not a surprise to CARD -- I mean, to SSA staff that there are B-read onlys, qualifications under the HH checklist.

Ex. 5: Hrg. Tr. 21:14-20, Sept. 12, 2022.³

So they know. And, believe me, CARD staff has been in contact with the SSA virtually, you know, every week for years. SSA staff know that this, that this is part of the lawsuit. They know these issues, and they still keep accepting it.

Ex. 5: Hrg. Tr. 28:21-25.

So, Your Honor, just because CARD relied on all those B-readers for all those forms, all they were doing is following the law. And that's what SSA told them to do, and that's what they've done ever since 2010, and every part of the government is aware of that, and every part of the government sustains it. It can't be a false claim when everything that the CARD is doing is approved by the government. It doesn't make sense.

Thanks.

THE COURT: All right. The matter is fully submitted.

Ex. 5: Hrg. Tr. 100:1-11

³ Relator is aware it will need to order the official transcript and will supplement this exhibit with a certified copy of the Excerpt of Transcript.

Based on what occurred at the SSA 30(b)(6) witness deposition, CARD's representations before this Court were flagrantly false.

The email exchange revealed at that deposition, written in early April 2023, proves that what CARD stated on the record at this hearing was false. SSA told CARD directly that an individual with a B-Read only is not considered diagnosed. (*See* Exs. 138 & 139). Furthermore, the SSA witness testified that the SSA had **never** trained, instructed or told CARD in any manner that this practice was acceptable in any way. (Ex. 1: Dep. SSA 93:5-95:5.)

While the failure to produce all of the emails before the SSA deposition is problematic, the failure to produce this specific email chain in Exhibits 138 and 139 - which referenced a topic central to the purpose of the deposition - is extremely troubling.

As the deposition concluded, CARD disclosed approximately 2,500 emails based on the request of Relator's counsel. Some of those emails contain communications between CARD and its counsel. These emails show that CARD's counsel drafted the response sent to SSA in April in an attempt to suggest that SSA was changing its policies. SSA's response makes it clear that is not the case: SSA's policies have not changed and SSA was not aware of CARD's practice of submitting patients for EHH Medicare without a diagnosis, let alone approve of such a practice. (Ex. 139). CARD's attempt to create a false record is worrisome, especially given

CARD's position - and CARD counsel's representations - at the summary judgment hearing.

CARD's counsel has attempted to claw back his emails with CARD, claiming that they were only produced to him by CARD the night before the SSA deposition and that he did not have time to review them. But CARD's willful failure to review the emails before they were produced is not tantamount to inadvertent disclosure. At the very least, the Court should find that CARD has waived attorney-client privilege and that any emails that have already been produced between CARD and its counsel are admissible. The Court should also sanction CARD for its untimely disclosure of highly relevant emails.

These are issues which Relator's counsel is prepared to address at the June 8, 2023 Pretrial Conference.

DATED this 1st day of June, 2023.

KNIGHT NICASTRO MACKAY, LLC

By: /s/ W. Adam Duerk

W. Adam Duerk

Attorneys for BNSF Railway Company

CERTIFICATE OF SERVICE

I certify on this 1st day of June, 2023, a copy of the foregoing document was served upon the following persons by the following means:

1-3 CM/ECF
 Mail
 Hand Delivery
 Overnight Delivery Service
 Fax
 Email

1. Clerk, U.S. District Court
2. Michael Kakuk
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KNIGHT NICASTRO MACKAY, LLC

By: /s/ W. Adam Duerk
W. Adam Duerk
Attorneys for BNSF Railway Company

BNSF

v.

CARD

Heather Hillmann

May 16, 2023



216 16th Street, Suite 600
Denver, CO 80202
303-296-0017

IN THE UNITED STATES DISTRICT COURT		Page 1	Page 2
FOR THE DISTRICT OF MONTANA		1 APPEARANCES:	
MISSOULA DIVISION		2 KNIGHT NICASTRO MACKAY, LLC	
VIDEO DEPOSITION OF HEATHER HILLMANN		3 By W. Adam Duerk, Esquire	
May 16, 2023		4 283 W. Front Street, Suite 203	
BNSF,	Case No.	5 Missoula, Montana 59802	
	CV-19-40-M-DLC	6 duerk@knightnicastro.com	
Plaintiff,		7 On behalf of BNSF.	
vs.		8 U.S Department of Justice	
CARD,		9 United States Attorney's Office	
Defendant.		10 By Michael Kakuk, Assistant U.S. Attorney	
		11 901 Front Street, Suite 1100	
		12 Helena, Montana 59626	
		13 michael.kakuk@usdoj.gov	
		14 On behalf of the SSA.	
		15 BECHTOLD LAW FIRM, PLLC	
		16 By Timothy Bechtold, Esquire	
		17 PO Box 7051	
		18 Missoula, Montana 59807	
		19 tim@bechtoldlaw.net	
		20 On behalf of CARD.	
		21 ALSO PRESENT: Sarah Berry	
		22 Social Security Administration	
		23 Dwayne Beuthel	
		24 Videographer	
		25	
Page 3		Page 4	
1 Pursuant to Notice, the Video Deposition of HEATHER		1 P R O C E E D I N G S	
2 HILLMANN, called by the Plaintiff, taken on May 16,		2 THE VIDEOGRAPHER: The time is 10:32.	
3 2023, commencing at 10:32 AM Mountain Time before		3 Today is May 16th, 2023. This begins the	
4 Annie Sager, Court Reporter and Notary Public within		4 video-recorded deposition of Heather Hillmann	
5 and for the State of Colorado.		5 taken in the matter of BNSF versus CARD.	
6		6 This deposition is being taken at	
7 EXAMINATION	PAGE	7 1961 Stout Street, Denver, Colorado, 80202. The	
8 Mr. Duerk:	6, 159	8 court reporter today is Annie Sager. The	
9 Mr. Bechtold:	109, 169	9 videographer is Dwayne Beuthel.	
10		10 Counsel will introduce themselves and	
11 EXHIBIT	DESCRIPTION	11 the parties they represent beginning with the	
12 Exhibit 135	Subpoena	12 plaintiff's counsel first.	
13 Exhibit 136	Declaration	13 MR. DUERK: Adam Duerk for Relator BNSF.	
14 Exhibit 137	Statement of Disputed Facts	14 MR. BECHTOLD: This is Tim Bechtold on	
15 Exhibit 138	E-mail	15 behalf of the Center for Asbestos Related	
16 Exhibit 139	E-mail	16 Disease.	
17 Exhibit 140	HI 00803.001	17 MR. KAKUK: Michael Kakuk, U.S.	
18 Exhibit 141	HI 00803.050	18 Department of Justice.	
19		19 MS. BERRY: Sarah Berry for the	
20		20 Social Security Administration.	
21		21 THE VIDEOGRAPHER: Will our	
22		22 court reporter please swear in the deponent.	
23		23 (WHEREUPON, the oath was administered by	
24		24 the court reporter.)	
25		25 WITNESS RESPONSE: Yes, I do.	

	Page 5	Page 6
1	THE COURT REPORTER: Thank you. Go	1 MR. DUERK: Thank you.
2 ahead.		2 MR. KAKUK: I understand that factual
3	THE VIDEOGRAPHER: You may begin.	3 issues can bleed into policy questions. I am
4	HEATHER HILLMANN,	4 assuming that I will have to object if something
5 a witness in the above-entitled proceedings,		5 is outside the scope of the requests if we get
6 after having been first duly sworn,		6 into any policy issues.
7 testified under oath as follows:		7 I just want us all to be clear from the
8	MR. KAKUK: Gentlemen, at the outset of	8 get-go that what that means on behalf of the
9 this I just want to point out that per our		9 agency is that the agency was not required to
10 e-mail yesterday, Ms. Hillmann is here on behalf		10 prepare Ms. Hillmann for that request, and any
11 of SSA specifically for requests 17 through 22,		11 answer that Ms. Hillmann chooses to give is not
12 25 through 29, and 36 through 39.		12 on behalf of the agency.
13	We believe these are essentially the	13 So if I just say objection, scope, we
14 factual requests that were in the 30(b)(6)		14 all understand moving forward what that means,
15 deposition notice. The social security agency		15 and then you can continue on with the questions
16 has designated somebody else for the policy		16 and answers.
17 questions.		17 Does that make sense?
18	MR. DUERK: And in terms of the notice	18 MR. DUERK: It does to relator.
19 of deposition, I am assuming we are taking about		19 MR. BECHTOLD: Yes.
20 the same paragraphs that align with what we will		20 MR. KAKUK: Thank you.
21 mark as Exhibit 135, the subpoena to SSA for		21 EXAMINATION
22 30(b)(6) testimony.		22 BY MR. DUERK:
23	(WHEREUPON, Deposition Exhibit 135	23 Q Would you please state your full legal name
24 marked for identification by the reporter.)		24 spelling your last name.
25	MR. KAKUK: That's correct. Thank you.	25 A Heather Marie Hillmann, H-I-L-L-M-A-N-N.
	Page 7	Page 8
1	Q Ms. Hillmann, have you had your deposition taken	1 providing additional support in regards to data
2 in the past?		2 exchange and Medicare.
3 A No.		3 Q Ms. Hillmann, it is my understanding that you've
4 Q Okay. I will go over a few ground rules today.		4 been offered by the Social Security Administration
5 The most important is if any of my		5 as the 30(b)(6) deponent pursuant to a subpoena
6 questions are unclear or you need a break for any		6 issued to the SSA?
7 reason, including speaking with counsel in the		7 A Yes.
8 room, will you just indicate that to me so that we		8 Q All right. Have you seen that subpoena and the
9 can take a break?		9 topics referenced?
10 A Yes.		10 A I have.
11 Q All right. Ms. Hillmann, what is your		11 Q Okay. And I have marked the subpoena itself as
12 professional title?		12 Exhibit 135.
13 A My professional title is subject matter expert		13 Do you have a copy of that in front of you?
14 Medicare lead, and I am also a data exchange		14 A I do.
15 coordinator.		15 Q I think I can shoot through this pretty quickly,
16 Q And who do you work for?		16 but it's my understanding that you were prepared
17 A Social Security Administration.		17 to address paragraphs 17 to 22?
18 Q How long have you been employed with the		18 A Correct.
19 Social Security Administration?		19 Q Paragraphs 25 to 29?
20 A 21 years in September.		20 A Yes.
21 Q Where have you primarily been based?		21 Q And paragraphs 36 to 39 as referenced in this
22 A Denver.		22 subpoena, is that your understanding also?
23 Q Okay. And what are some of your job		23 A Yes.
24 responsibilities related to your position at SSA?		24 Q Ms. Hillmann, what did you do in order to prepare
25 A Training the field offices on different policy,		25 to address these topics today?

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1	A	I reached out to a number of components in headquarters, the office of information systems and policy, and then the office of program support as well and then the local Kalispell office in addition to reaching out to my former Medicare counterpart that mentored me and had a lot to do with EHH cases, and she is now retired. Her name is Kathy Will, formerly Kathy Suarez.	1	A	I was.
2	Q	In terms of any other SSA employees, do you recall the names of any individual SSA employees that have worked at the Kalispell field office in Montana?	2	Q	All right. In terms of the materials that you reviewed, the paper records, if you could give me a survey or a basic understanding of what kind of paper records you reviewed that would be helpful.
3			3		
4			4		
5			5		
6	A	Terra Whiteman, Sonya Hymas, and there is a number of other field office technicians, but I don't have them all memorized. I do about six different states.	6	A	Okay. I reviewed different policies that have been in effect since roughly around 2010, and that was HI 00803.50, HI 00803.001, emergency message 10042REV, and then a variety of e-mail contacts back and forth regarding training for social security employees.
7	Q	Ms. Hillmann, was it your intent and understanding in preparing for this 30(b)(6) deposition that you were to seek and gather information and facts related to the topics that you intend to address today from a variety of different sources, both human sources as well as paper sources?	7	Q	All right. And did these written materials help inform the facts that you are going to establish for the record today?
8			8		
9			9		
10			10		
11			11		
12	A	Correct.	12	A	Absolutely.
13	Q	And were you able to successfully accomplish that task in your view?	13	Q	I would like to look first at what has been marked previously as Exhibit 76. You have a notebook in front of you. Behind tab 3 I believe you should find Exhibit 76.
14			14		
15			15		
16			16		
17			17		
18			18		
19			19		
20			20		
21			21		
22			22		
23	A	Correct.	23	A	Do you recognize this?
24	Q	And were you able to successfully accomplish that task in your view?	24	A	Yes, I do.
25			25	A	And what is it?
					This is HI 00803.050. That is our policy instructions for our social security technicians for processing EHH claims.
Page 11			Page 12		
1	Q	Ms. Hillmann, I will be referencing Exhibit 76 as well as another exhibit under the program operations manual system as the POMS today.	1		In terms of the POMS, what is the significance of this particular section?
2	A	Okay.	2	A	The significance of this particular section is just these are instructions for the technicians that are processing the EHH claims to follow.
3	Q	Does that make sense to you?	3	Q	Okay.
4	A	Yes.	4	A	It's the required documentation they have to follow.
5	Q	What generally is the POMS, if you can describe it for me?	5	Q	And in terms of those technicians, are we talking about the SSA employees who may be working at the Kalispell field office in Montana?
6	A	It's basically our policy instructions and our technicians instructions on how to process claims.	6	A	Yes.
7	Q	Okay. In terms of Exhibit 76, is this HI 00803.050 titled developing medical requirement for entitlement to EHH Medicare?	7	Q	All right. Is this essentially the set of working instructions or their policy for how to look at EHH forms?
8	A	Yes.	8	A	This is their instructions on how to process the claim.
9	Q	Is this one of the POMS sections that you reviewed in preparation for your testimony?	9	Q	The claim itself?
10	A	Correct.	10	A	Uh-huh.
11	Q	If you would look through Exhibit 76 related to the enumerated POMS section at the top of page 1, does this appear to be a true and accurate copy of the POMS for the medical requirement for entitlement to EHH Medicare?	11	Q	Okay. If you would please read section A under medical requirement for entitlement to EHH Medicare that would be helpful.
12	A	Yes.	12	A	"An individual exposed to environmental health hazards (EHH) in Lincoln County, Montana, must meet a medical requirement for entitlement to EHH
13	Q	I will move to admit if Exhibit 76 hasn't already been admitted.	13		
14			14		
15			15		
16			16		
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20			20		
21			21		
22			22		
23			23		
24			24		
25			25		

Page 13				Page 14			
1	Medicare. He or she must have been diagnosed with	1	Q	All right. And just so that we are on the same			
2	an asbestos-related disease (ARD) established by	2		page with the jury here, in terms of the medical			
3	certain diagnostic methods."	3		provider, is it fair to say that in EHH Medicare			
4	Q Ms. Hillmann, is it your understanding that this	4		claims or social security claims involving the			
5	policy is the same policy that has been in place	5		CARD clinic, the medical provider would be CARD?			
6	for at least the last decade related to Medicare	6	A	For CARD claims, yes. They're not the only ones			
7	claims under the EHH program?	7		that take in this claim. There's other			
8	A Yes.	8		physicians.			
9	Q Okay. What is the next section titled?	9	Q	Right.			
10	A Developing and documenting medical requirement.	10	A	Yes.			
11	Q Just generally, Ms. Hillmann, what does this	11	Q	Understood. And during the course of this			
12	section address?	12		litigation, I will represent to you that we will			
13	A This section addresses how the technician would	13		only be focusing on EHH claims related to CARD.			
14	address getting the required forms to process the	14	A	Okay.			
15	claim.	15	Q	Okay?			
16	Q All right. And what are those required forms?	16	A	Uh-huh.			
17	A Depending on the type of claim that we are taking,	17	Q	So if you could describe who is responsible for			
18	if it's EHH Medicare, we are obtaining one 827,	18		sending out those SSA-827 forms to CARD that would			
19	SSA-827 medical release form, and we are sending	19		be helpful.			
20	that out with the EHH checklist to the medical	20	A	Those are field office technicians that take			
21	provider.	21		claims, so those are claims specialists or claim			
22	If it involves disability, we obtain two	22		technicians or technical experts within the			
23	signed SSA-827s which is the medical release form,	23		Kalispell field office.			
24	and then we also additionally send that out with	24	Q	All right. Ms. Hillmann, I will represent to you			
25	the EHH checklist to the medical provider.	25		that the jury will have seen or heard several			
Page 15				Page 16			
1	different names related to technicians in the	1		send that back to social security.			
2	Kalispell field office by the time your testimony	2	Q	Got it.			
3	airs.	3	A	Yeah.			
4	One of those names is Sonya Hymas or	4	Q	Okay. So once these SSA-827 forms are sent to the			
5	Sonya Peterson. I believe she had several	5		medical provider, what happens next?			
6	different last names during that period.	6	A	Could you repeat that question? I'm sorry.			
7	To the best of your knowledge, was	7	Q	Sure. I am just trying to give the jury an idea			
8	Sonya Hymas an EHH technician in the Kalispell	8		of step-by-step what happens in the process of			
9	field office?	9		obtaining EHH forms.			
10	A I can probably speak on that in the last couple of	10	A	Okay.			
11	years that I have gotten to know her and know that	11	Q	And processing these Medicare claims.			
12	she takes Medicare claims. I can't specifically	12	A	Okay. So once, you know, we actually have the			
13	tell you if she has taken EHH claims, but I'm	13		claimant within the office or on the phone let's			
14	assuming that she has within that field office.	14		say, for instance, we are going to complete step 1			
15	Q Fair enough.	15		which is their identifying information, their			
16	So is it fair to say that it's the EHH	16		social security number, and then their name and			
17	field office's responsibility for sending these	17		their date of birth which is at the top of the EHH			
18	release forms to the CARD clinic to make sure that	18		checklist. In addition, we complete the 827 and			
19	the patients have authorized a release of their	19		leave, you know, the bottom for the claimant to			
20	medical information back to the	20		sign.			
21	Social Security Administration related to EHH	21		Once we obtain that, we send that medical			
22	claims or how does that work?	22		release form and the EHH checklist to the CARD			
23	A Okay. So the medical release form goes with the	23		clinic or whatever physician that they have, and			
24	EHH checklist to give us authorization for the	24		then once that information is obtained from the			
25	medical provider to actually complete the form and	25		CARD clinic or whatever physician sends that back,			

		Page 17	Page 18
1	that is when we are able to start the claims	1	case, is that fair?
2	processing.	2	A Correct.
3	Q All right. Just so that I'm as clear as I can be	3	Q All right. What happens at CARD with this EHH
4	in front of a jury, I am looking at page 4 of	4	checklist to the extent that you know?
5	Exhibit 76.	5	A They complete it to the best of their ability
6	Is this a copy of a blank EHH form in terms	6	following section 1881A of the act. We don't get
7	of an exemplar?	7	involved past that point. We are not medical
8	A Yes.	8	experts, and that's outside the scope of our jobs.
9	Q Okay. And is this the form that the EHH field	9	Q All right. And in fact, is that reflected in this
10	technician would fill out in terms of step 1, the	10	section of the POMS related to what is supposed to
11	top box, with the CARD patient's name,	11	happen with the EHH checklist?
12	social security number and date of birth?	12	MR. KAKUK: Objection, scope.
13	A Yes. That is the only box that they complete.	13	A Sorry.
14	Q Okay. Is there any other information or any other	14	MR. KAKUK: Go ahead and answer.
15	box on this form that the patient would complete	15	Q Go ahead.
16	with SSA?	16	A I think it's just pretty laid out and it's pretty
17	A No.	17	clear in there what our job roles are within the
18	Q Okay.	18	policy.
19	A That would go to the physician.	19	Q All right. Let's go about it this way.
20	Q In terms of the box under step 2 on page 4, is	20	Does section 2 titled EHH checklist set out
21	there any information here that would be completed	21	your understanding of the goals and job
22	by the SSA?	22	responsibilities for what is going to happen with
23	A No. We are not expertised in that area.	23	this EHH checklist at SSA?
24	Q Okay. So after step 1 is complete, box 1 is	24	MR. KAKUK: The same objection.
25	complete, the EHH form then goes to CARD in this	25	Q Okay.
		Page 19	Page 20
1	A I can honestly just say that, you know, once we	1	form, but to be clear, if we could look at the
2	have a completed checklist that shows that there	2	policy itself, do you see the section titled EHH
3	is a diagnosis underneath section 1881A of the act	3	checklist?
4	which is with a completed form, then we would be	4	A Yes.
5	able to process this claim once step 2 and step 3	5	Q Would you please read that, the purpose of the EHH
6	are completed. We are not medical experts like	6	checklist.
7	I've previously mentioned. We don't get into the	7	A "The purpose of the EHH Checklist is to obtain
8	diagnosis or the diagnosis codes.	8	information from the claimant's medical source
9	Q All right.	9	regarding the claimant's diagnosis and presence in
10	A Yeah.	10	Lincoln County, Montana. The claims
11	MR. KAKUK: Mr. Duerk, I'm sorry. I	11	representative (CR) will use the completed EHH
12	might have misunderstood. Were you talking	12	Checklist to determine if the claimant's condition
13	about section 2 of the form or section 2 of the	13	meets the medical requirement. The EHH Checklist
14	policy?	14	may also provide evidence of presence in Lincoln
15	MR. DUERK: I was talking about	15	County, Montana. (For policy on using the EHH
16	section 2 of the form.	16	Checklist as proof of presence in Lincoln County,
17	MR. KAKUK: Okay.	17	Montana, see HI 00803.040B and HI 00803.040C.)
18	MR. DUERK: And I was about to go into	18	See images of the EHH Checklist and cover notice
19	section 2 of the policy.	19	in HI 00803.050B.3 in this section."
20	MR. KAKUK: Apologize for anticipating.	20	Q All right. So a couple of general questions here
21	MR. DUERK: Okay. No problem.	21	about the EHH forms and the facts that you are
22	Q Ms. Hillmann, let's go about it this way. I'll	22	aware of related to how these forms are processed.
23	reference section 2 of the policy.	23	Is it your understanding based on the facts
24	A Okay.	24	related to you by EHH technicians and field
25	Q Which I believe corresponds to section 2 of the	25	personnel that any information about a medical

		Page 21	Page 22
1	diagnosis related to these EHH forms for CARD	1	the facts that you're aware of, an EHH form would
2	patients is to be placed on section 2 of the EHH	2	be returned to the Social Security Administration
3	form by the CARD physicians or the CARD medical	3	field office in Kalispell and there was a section
4	provider?	4	left blank, for example, if a form failed to
5	A Correct.	5	identify an asbestos-related condition or
6	Q Okay. And in terms of any direction, training,	6	conditions and its date of diagnosis, if a form
7	instruction, teaching, on-site supervision, any	7	was lacking any information about the diagnosis or
8	interaction with CARD employees at the CARD	8	diagnoses of asbestos-related conditions, would
9	facility, does the SSA provide any training or any	9	the SSA be able to process that claim and approve
10	teaching or any instruction by any name to CARD	10	Medicare benefits for that CARD patient?
11	about how to complete an EHH checklist other than	11	A No.
12	what is shown here in these POMS sections?	12	Q Why not?
13	A No. And I have actually checked with other	13	Because they have to meet the listing and they
14	components including the Kalispell office, and	14	have to have a date of diagnosis, they have to
15	that has never been a former practice.	15	have the printed name of the physician, the
16	Q Okay. So to the best of your knowledge as the	16	physician's signature, and the date listed as
17	30(b)(6) deponent, based on your review of	17	well, as well as step 3, the information within
18	information in both printed form and interviews	18	step 3 and step 2.
19	with SSA field staff and other SSA employees, is	19	And we have actually put this out in policy
20	it your understanding that SSA has ever taught	20	in an emergency message, it was 10042REV that gave
21	CARD how to fill out an EHH form in any regard	21	those specific instructions, and I believe it came
22	outside of what is included in these POMS?	22	out in 2010, archived in 2011, the latter part of
23	A No.	23	2011, and it was a public-facing policy, so the
24	Q Okay. In terms of the form itself, and I'm	24	public did have access as well as CARD to that
25	looking at page 4 on Exhibit 76, what if, based on	25	policy online.
		Page 23	Page 24
1	Q Okay. If you could just generally share with me	1	don't -- we don't check -- we are not medical
2	the information that was covered in that emergency	2	experts, so just like with our disability claims,
3	policy that would be helpful.	3	our claims technicians are not going to be the
4	A It basically laid out the guidelines of	4	ones checking medical references, checking,
5	HI 00803.50 and that if the environmental health	5	you know, the medical evidence. That is not their
6	hazard checklist was not completed correctly	6	job and that is outside of the scope of their job.
7	meaning that there was no diagnosis, no diagnosis	7	Q All right. And to the best of the information
8	date, and it doesn't have to necessarily -- like	8	you've been able to gather, the boundaries of
9	if they marked a diagnosis, but then there is not	9	SSA's job and the procedure for what SSA will do
10	a diagnosis date, we still have to deny the claim.	10	and will not do vis-a-vis these checklists is
11	Q All right.	11	communicated to CARD?
12	A Yeah.	12	Q I don't know if it's communicated to CARD, but
13	Q So without a diagnosis of an asbestos-related	13	it's communicated to our employees, and that's who
14	condition, a CARD patient simply would not receive	14	we are responsible for.
15	Medicare eligibility or Medicare benefits	15	Q All right.
16	according to the SSA?	16	A Yeah.
17	A Correct.	17	Q In terms of these program operation manual systems
18	Q Okay. Now, in terms of the SSA's reliance on	18	or the POMS, are these available to the public
19	these forms, does the SSA do any fact-checking or	19	online?
20	independent investigation or ask for any other	20	A They are.
21	records to support a claim for Medicare benefits	21	Q Okay. And in terms of the emergency policy that
22	other than this EHH checklist?	22	you just referenced, I'm assuming that that was
23	A Not to my knowledge. There is no additional	23	made available to any member of the public online
24	Medicare benefits quite like this, but our claims	24	as well?
25	technicians, I do want to state, you know, we	25	A Absolutely.

		Page 25			Page 26
1	Q	Okay. So page back to page 4 of Exhibit 76 with this EHH form, if the EHH form doesn't include a diagnosis related to asbestos exposure, what happens at that stage in the process when the SSA field office gets the form based on the information you've reviewed?	1	marked that or they haven't even marked the date of diagnosis, I mean, that would be a denial.	
2			2		
3			3	Okay.	
4			4	Yeah. Because the physicians are required to be following section 1881A of the act.	
5			5		
6			6	In terms of any medical training that you're aware of possessed by any of these field technicians, are any of the field technicians at the Kalispell office medical doctors?	
7	A	If the SSA field office gets this form and we do not have a diagnosis that's listed within the checklist, then it's a deny.	7		
8			8		
9			9		
10	Q	All right. And what would be some examples of denials that might occur for diagnoses that don't show up in the checklist if you could give me a for instance.	10	No.	
11			11	Are any of the field technicians in the Kalispell office pulmonologists?	
12			12		
13			13	No.	
14	A	Well, they don't meet the medical requirements of the policy, so then it would be a denial based off of that. We have a special code for it.	14	Are any of them radiologists?	
15			15	No.	
16			16	Are any of them medical professionals of any designation as far as you're aware?	
17	Q	Okay.	17		
18	A	Uh-huh.	18	No.	
19	Q	And so diagnoses that don't meet the medical requirement, I'm assuming these would be diagnoses of conditions that don't have anything to do with asbestos exposure, for example, is that fair?	19	Okay. Is it fair to say that the Kalispell field office personnel are relying on CARD providers, CARD doctors, to provide all of the accurate, all the true and accurate information related to an asbestos-related diagnosis in this EHH form?	
20			20		
21			21		
22			22		
23	A	Well, I mean, I can't speak on that. If we don't have a completed form with, you know, the impairments that are listed here and they haven't	23		
24			24	MR. KAKUK: Objection, scope. Go ahead.	
25			25	Yes.	

		Page 27	Page 28
1	BY MR. DUERK:	1	paper application?
2	Q Okay. Now, in terms of the rest of this POMS	2	The name of the medical provider or the name of
3	policy, I think we have read the EHH checklist	3	the medical source.
4	heading. If you could go through each of the	4	Q Okay. Gotcha.
5	steps that -- is it FO 872?	5	And so in terms of remarks here, would an
6	What does FO 872 stand for?	6	example of the provider just be CARD Clinic,
7	A That's the field office for Kalispell, Montana.	7	Libby, Montana, or something to that effect?
8	Q Okay. If you could go through the steps that the	8	A With their address.
9	field office in Kalispell takes to obtain a	9	Q Understood.
10	completed EHH checklist that would be helpful.	10	A Uh-huh.
11	A And you are wanting me to start on page 2?	11	Q Okay. Anything else that I failed to ask about
12	Q I am.	12	this first part, section A of the POMS?
13	A Okay. "FO 872 takes the following actions to	13	A No.
14	complete an EHH Checklist: Complete step 1	14	Q Okay. So what happens when the claimant's medical
15	(identify the individual) on the EHH Checklist;	15	source gets the EHH form?
16	fill in the FO's fax number on the cover notice;	16	A So the claimant's medical source will take the
17	and forward the EHH Checklist with the cover	17	following actions to complete and return the EHH
18	notice to the claimant's medical source with a	18	checklist. Complete step 2, identify the
19	signed SSA-827. The name of source will appear in	19	asbestos-related condition and its date of
20	'Remarks' in the MCS claims path or the paper	20	diagnosis, and step 3, identify presence in
21	application."	21	Lincoln County, Montana, fill in the printed name,
22	Q In terms of that note, just so the jury isn't left	22	physician's signature and date, and return it by
23	scratching their heads, what does that mean, what	23	fax to the number provided on the cover notice or
24	does that indicate, the name of source will appear	24	mail it to the Kalispell field office located at
25	in the "remarks" in the MCS claims path or the	25	275 Corporate Drive, Ashley Square Mall, Suite D,

		Page 29	Page 30
1	Kalispell, Montana, 59901.		
2	Q All right. Thank you.		1 completed EHH checklist.
3	A Uh-huh.		2 Is that a fair representation?
4	Q There is another note here that I think touches on the issue of whether any supporting medical evidence needs to be provided by CARD. If you could first read it, then I have a few questions.		3 A Yes.
5			4 Q Okay. Would you please read this section.
6			5 A Field office 872, which is the Kalispell field office, "will take the following actions to store the completed EHH Checklist: Obtain a bar code fax coversheet via the Electronic Disability Collect System," which is EDCS.
7			6
8	A Okay. "The medical source does not need to provide the supporting medical evidence."		7
9			8
10	Q Okay. In terms of any other medical evidence that is submitted along with the EHH form, based on your review of the facts, your interviews in the case, your review of the paperwork, to the best of your understanding, is there anything other than the EHH form that is submitted to the field office, for example, any CT interpretive reports, any medical records, any notes from the doctor so to speak, or is it just the EHH form to the best of your understanding based on the factual information you've reviewed?		9
11			10 "And fax the completed EHH Checklist into the Electronic Folder (EF) if the claimant is also applying for disability benefits or has a pending disability claim; and retain the completed EHH Checklist until the MBR is established. Once the MBR is established, fax the EHH Checklist into the EF using NDRed. Use a Document Type of 'Other.' The document description should show 'EHH Checklist' and confirm that the EHH Checklist is in the EF or electronic folder and legible, then shred the original."
12			11
13			12
14			13
15			14
16			15
17			16
18			17
19			18
20			19
21	A It's just the EHH checklist.		20
22	Q Understood. Okay. All right.		21 Q All right. To the best of your understanding and based on your review of the factual information and documents in this case, does this section of the POMS describe what actually occurs with those EHH forms?
23			22
24			23
25			24
		Page 31	Page 32
1	A Yes.		1 Q All right.
2	Q Okay. Just a couple of questions. There is a reference to the MBR here on page 3.		2 A Uh-huh.
3			3 Q So turning to page 4 of the POMS again, we see this EHH checklist, and so in terms of the EHH checklist then based on your review of the facts in this case, if an EHH checklist does not indicate that the patient has a diagnosis of an asbestos-related condition, does that patient become eligible for Medicare?
4			4
5	A That is the master beneficiary record, so that's going to be a record that is established for Medicare beneficiaries, retirement beneficiaries, disability beneficiaries and survivor beneficiaries.		5
6			6
7			7
8			8
9			9
10	Q Okay. The other acronym NDRed, what is that reference?		10 A Again, no, they would not. If we don't have a diagnosis that is listed within the checklist or a date of diagnosis and step 2, step 3, printed name, physician signature and date is not complete, we will deny the claim.
11			11
12	A That's an electronic file, and that actually stands for -- there is a lot of acronyms. Just give me one second.		12
13			13
14			14
15	Q It's the government. It's okay.		15 Q All right. In terms of the next program operation manuals system or POMS, I would like you to turn to what's marked as Exhibit 75. This is behind tab 4 of your notebook.
16	A Honestly, I can't remember off the top of my head. I wish they had spelled it out like they did with the Disability Collection System.		16
17			17
18			18
19	Q That's okay.		19 A Okay.
20	A But it's essentially what that electronic file is for is for most of our Medicare retirement survivors insurance beneficiaries. For our disability claimants we collect that information in EDCS which is the Electronic Disability Collection System.		20 Q Ms. Hillmann, do you have Exhibit 75 in front of you?
21			21 A I do.
22			22 Q What is this?
23			23 A This is the background for EHH Medicare, so the hospital insurance HI entitlement for individuals
24			24
25			25

				Page 33	Page 34
1		exposed to environmental health hazards, EHH.		1	Q
2	Q	Is this a document that you've seen before?		2	
3	A	Yes.		3	A
4	Q	And in fact, is this a document that you reviewed		4	Q
5		in preparation for your deposition today?		5	
6	A	Yes.		6	
7	Q	If you would leaf through it.		7	
8	A	Okay.		8	A
9	Q	And tell me if this appears to be a true and		9	Q
10		accurate copy of the POMS section for		10	
11		HI 00803.001, hospital insurance entitlement for		11	A
12		individuals exposed to environmental health		12	
13		hazards.		13	
14	A	Yes.		14	
15	Q	Okay. If we could just focus on Exhibit 75		15	
16		generally, what is this and what is its		16	
17		significance?		17	
18	A	This is just the background information on EHH		18	
19		Medicare in general, just how it came about		19	
20		underneath the Affordable Care Act, how we added		20	Q
21		the section into the Social Security Act, and it		21	A
22		just goes over the basic requirements for		22	Q
23		entitlement. It's not actually processing		23	
24		instructions, but it's giving our technicians a		24	
25		background on it.		25	
				Page 35	Page 36
1		whether it was printed or through interviews of		1	
2		living humans at SSA, does this section on the		2	A
3		background for EHH Medicare appear to be true and		3	
4		accurate and to the best of your understanding		4	
5		from what you learned from others during your		5	
6		inquiry?		6	
7		MR. KAKUK: Objection, scope.		7	
8	A	Yes.		8	Q
9	Q	Okay.		9	
10	A	To my knowledge.		10	
11	Q	All right. And does it appear to you that this		11	
12		section, section 00803.001 states that in order to		12	
13		receive EHH Medicare there must be certain		13	
14		individuals exposed to environmental health		14	A
15		hazards and diagnosed with a medical condition		15	Q
16		caused by such exposure?		16	
17		MR. KAKUK: The same objection.		17	
18	A	Yes.		18	
19	BY MR. DUEK:			19	
20	Q	Okay. Based on the language that we see here, is		20	
21		there another section that we haven't read yet for		21	
22		background for EHH Medicare?		22	
23	A	No.		23	A
24	Q	Okay. I am looking at the next paragraph that		24	
25		starts with "currently." Could you read that part		25	

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1	in my same position, she is now retired,		1	Q	Okay. Did you find any information about any SSA
2	Kathy Suarez or Kathy Will, and I could not find		2		individuals or employees ever visiting Libby,
3	anything to that extent.		3		Montana or the CARD clinic?
4	Q	In terms of the way that you tried to turn up any	4	A	No.
5	information along those lines, did you ask		5	Q	Okay. Did you find any information or any written
6	questions about any type of training or any type		6		materials related to anybody from the
7	of education or any type of instruction that may		7		Social Security Administration ever providing CARD
8	have occurred at any time in the history of SSA		8		with any awards?
9	working with CARD on the EHH program?		9	A	I did reach out to our headquarters components and
10	A	I did.	10		they tried to track down monetary funds as well as
11	Q	Okay. And according to your search, is it fair to	11		the exemplary awards, and we couldn't find any
12	say that the information you uncovered revealed no		12		records of that, but our regional commissioner
13	training of CARD employees along these lines ever		13		did -- she did mention the possibility that there
14	existed?		14		was a regional-level award, but she has no record
15	A	SSA employees have never trained CARD.	15		of it.
16	Q	All right.	16	Q	Okay. Ms. Hillmann, I will represent to you that
17	A	Uh-huh.	17		I have seen a photograph of what appears to be
18	Q	So would it be fair to say that if there was any	18		some sort of a plaque or a trophy of some kind
19	claim that a training or an instruction by SSA in		19		giving CARD some recognition for something.
20	Libby, Montana of CARD officials or CARD employees		20		Perhaps Mr. Bechtold may ask you some
21	in terms of filling out an EHH form, is it fair to		21		questions about that, but have you seen any
22	say that if anyone suggested that it had ever		22		correspondence, any information about any type of
23	occurred, you found no evidence or facts in your		23		award outside of this photograph of a trophy?
24	search to support that?		24	A	No.
25	A	Correct.	25	Q	Okay. And in terms of any correspondence on file,

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1	did you look for any correspondence from the CARD		1	A	No.
2	clinic requesting training or asking about having		2	Q	In terms of the appropriate route for obtaining
3	Social Security Administration field		3		Medicare benefits, outside of the EHH form, is
4	representatives or staff from the Kalispell office		4		there any other avenue for a CARD patient or
5	coming out to CARD and providing instruction or		5		anyone else to obtain EHH Medicare other than an
6	training or guidance about any matter related to		6		EHH form being submitted to the
7	EHH Medicare?		7		Social Security Administration?
8	A	I did not find any correspondence.	8	A	No.
9	Q	All right. In terms of these POMS sections, both	9		MR. KAKUK: Objection, scope.
10	Exhibit 75 and Exhibit 76, do you see any language		10	A	Sorry. No.
11	in either of these program operational manual		11		BY MR. DUERK:
12	system publications that say anything about a		12	Q	Okay. Based on all of the facts that you
13	B read only being a sufficient basis for EHH		13		reviewed, based on all of your interviews in this
14	Medicare?		14		case, based on your review of information and
15	A	No.	15		factual materials, did you see any correspondence
16	Q	In terms of any communication outside of these	16		or any writings, e-mails of any kind from the SSA
17	POMS in terms of other POMS sections, the		17		saying that a B read by itself was sufficient to
18	emergency policy that you mentioned earlier or any		18		trigger Medicare eligibility for a CARD patient?
19	of the other information that you've referenced		19	A	No.
20	here today that you accessed during your		20	Q	In terms of the EHH form itself then, is the
21	preparation for this 30(b)(6) deposition, did you		21		submission of an EHH form that includes a
22	see any other materials from the		22		diagnosis of an asbestos-related disease or
23	Social Security Administration advising CARD that		23		condition the only avenue, route or mechanism that
24	a B read only would itself qualify an individual		24		you found through your factual inquiry of assuring
25	for EHH Medicare benefits?		25		that a patient would be Medicare eligible under

		Page 41	Page 42
1	the EHH Medicare program?		
2	A Yes.	1	Q Okay. So my question is this. Based on your
3	Q So for example, are you familiar with what a	2	review of all of the factual information, did you
4	B read is?	3	see any mechanism within the EHH Medicare program
5	A Absolutely not. That is outside the scope of my	4	for a CARD patient to receive Medicare benefits if
6	job.	5	only a B reader's checklist or interpretive report
7	Q All right. Understood. Let me just describe it	6	for a chest x-ray or CT were submitted to the
8	for you this way generally.	7	Kalispell field office?
9	A Okay.	8	MR. BECHTOLD: Foundation.
10	Q I will represent to you that a B read is -- it can	9	THE COURT REPORTER: Pardon?
11	be a report from a specialist radiologist who has	10	MR. BECHTOLD: Foundation.
12	been certified by NIOSH to read either a chest	11	BY MR. DUERK:
13	x-ray or in some circumstances a CT scan.	12	Q I asked her if she ever saw any example of that
14	First of all, is that information that	13	occurring in her factual investigation. Did you?
15	you've ever heard before about B readers?	14	A No.
16	A Uh-uh. It's not within our listed policies, so I	15	Q Okay. So Ms. Hillmann, I am asking basically a
17	wouldn't know and neither would our technicians.	16	logical question.
18	Q All right.	17	Based on your review of the facts in this
19	A It's outside the scope of our job.	18	case, did you see any evidence that if a B read,
20	Q And in terms of whether or not it's relevant to	19	an interpretive form was sent to the Kalispell
21	you within the scope of your job, do you	20	field office, did you see any evidence of any CARD
22	necessarily, not to put too fine a point on it,	21	patients that would receive Medicare eligibility
23	but do you necessarily even care what a B reader	22	or Medicare benefits based on that B read alone?
24	is?	23	Okay. I guess I need you to repeat the question.
25	A No.	24	Q Sure.
		25	A Because I think to be honest with you, our
		Page 43	Page 44
1	technicians don't get into B reads. We don't get	1	CARD clinic related to CARD patient Medicare
2	into all the medical issues with that. We follow	2	claims, is there any additional avenue, any
3	the checklist, and if everything is in the	3	separate piece of paper, any work around, any
4	checklist, we process our claims that way	4	exceptional route to getting Medicare benefits for
5	following policy.	5	a CARD patient that you came across during your
6	It's just like any other type of Medicare.	6	review of facts in this case other than an EHH
7	You have to have -- for international volunteers	7	checklist?
8	or for a disability SUP, you have to have required	8	A No.
9	forms for each type of Medicare, and if you don't	9	Q Okay. It's 11:30. I would ask that we take a
10	have those required forms, then you are going to	10	short rest break.
11	be disallowed.	11	THE VIDEOGRAPHER: The time is 11:26.
12	Q Understood.	12	We are off the record.
13	A Yeah.	13	(Break taken.)
14	Q So in terms of the EHH checklist form, is it fair	14	THE VIDEOGRAPHER: The time is 11:34.
15	to say that the technicians at SSA when it comes	15	We are back on the record.
16	to box number 2 about the diagnosis and how it was	16	MR. KAKUK: Mr. Duerk, during the break
17	arrived at, is it fair to say that SSA technicians	17	I believe Ms. Hillmann had something that she
18	are relying on CARD to provide true and accurate	18	wanted to clarify about people traveling to
19	information on those forms based on the materials	19	Montana to conduct training. I believe the
20	you've reviewed?	20	question was limited to Libby, but in case it
21	A Correct.	21	wasn't, Ms. Hillmann, was there more information
22	Q Okay. And aside from the EHH form itself and,	22	you wanted to provide?
23	again, I am sorry to be beating this to death, but	23	MR. DUERK: Why don't I ask a question
24	I just want to be really clear.	24	about that directly.
25	Aside from getting an EHH form from the	25	MR. KAKUK: Fair.

		Page 45			Page 46
1	BY MR. DUERK:		1	reviewed and the interviews that you have	
2	Q Ms. Hillmann, I was asking questions about		2	conducted, were there any aspects or elements of	
3	training in Libby. I may have failed to ask if		3	those trainings that were inconsistent with what	
4	there was training generally in Montana.		4	we have already reviewed in terms of the POMS	
5	Based on what Mr. Kakuk is presenting on		5	sections?	
6	the record, is there anything that comes to mind		6	A No.	
7	for you related to that topic?		7	Q Okay. And during those trainings, based on the	
8	A There was training for social security employees		8	information that you reviewed related to the	
9	from our regional office employees. Mary Lisa		9	facts, was there any information that indicated	
10	Lewandowski, our regional commissioner. Our		10	that that training of government employees	
11	current regional commissioner was there.		11	included any training that would allow for a CARD	
12	Nancy Berrihill, Kathy Will or Kathy Suarez,		12	patient to receive Medicare benefits without a	
13	Kelly Hansen and Chris DiGiacomo.		13	diagnosis of asbestos-related disease?	
14	Q All right. And in terms of each of the		14	A Can you repeat the question?	
15	individuals that you just named, is it fair to say		15	Q Sure. I am trying to focus just on this training	
16	that they are governments employees, not CARD		16	among government employees in Montana.	
17	employees?		17	A Okay.	
18	A Correct.		18	Q Based on the factual inquiry that you made, did	
19	Q Okay. And so in terms of the trainings in Montana		19	you see any information that indicated to you that	
20	likewise is it fair to say that the trainings		20	those trainings included anything about allowing	
21	provided were trainings from government employees		21	patients from CARD who did not have a diagnosis of	
22	to other government employees related to the EHH		22	asbestos-related disease to become Medicare	
23	Medicare program?		23	eligible?	
24	A Correct.		24	A No.	
25	Q Okay. In terms of the documents that you've		25	Q Okay. And specifically did you see anything in	
		Page 47			Page 48
1	the information that you reviewed that would have		1	tell me if I have read it correctly, and then I	
2	allowed CARD patients to receive Medicare		2	will have a few follow-ups. Okay?	
3	eligibility for life with only a B read?		3	A Okay.	
4	A No.		4	Q Paragraph 18. "The	
5	Q Ms. Hillmann, I would like to cover the individual		5	Social Security Administration's designated	
6	topics that you were asked to address in the		6	deponent must testify whether CARD staff have	
7	subpoena which has been marked as Exhibit 135 for		7	filled out the environmental health hazards	
8	purposes of this deposition. I will start with		8	checklists according to the training SSA provided	
9	paragraph 17 which is on page 11 of that subpoena.		9	CARD staff in 2011 from 2011 until the present	
10	Do you see that in front of you?		10	day."	
11	A Yes.		11	Q Did I read that correctly?	
12	Q Okay. I will read the topic for you. Please tell		12	A Yes.	
13	me if I have read it correctly.		13	Q Aside from the testimony that you have already	
14	"The Social Security Administration's		14	provided, do you have any additional information	
15	designated deponent must identify the SSA		15	to share on that topic?	
16	employees who trained CARD staff to fill out the		16	A No, just that we have never provided CARD staff	
17	environmental health hazards checklist in 2011."		17	any type of training.	
18	Did I read paragraph 17 correctly?		18	Q All right. Paragraph 19.	
19	A Yes.		19	"When a physician at CARD determines a	
20	Q Aside from the information that you have already		20	patient has asbestosis by interpretation of a	
21	provided, is there any other information on		21	computed tomographic radiograph of the chest, CARD	
22	paragraph 17 that we haven't covered?		22	staff enter the patient's name, social security	
23	A No, just that we have never trained CARD staff on		23	number and date of birth in the step 1 section of	
24	the EHH checklist.		24	the environmental health hazards checklist. Check	
25	Q All right. Paragraph 18, I will read it. Please		25	the asbestosis box in the impairment section of	

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1	step 2 of the environmental health hazards		1	paragraph 19?	
2	checklist, enter the date the CARD physician made		2	A	No.
3	the interpretation and the date of diagnosis		3	Q	Okay. Paragraph 20.
4	section of step 2, enter the dates the patient was		4		"When a B reader qualified physician
5	present in Lincoln County, Montana in step 3, and		5		determines a patient has asbestosis by
6	the CARD physician prints and signs the		6		interpretation of plain chest x-ray or a computed
7	physician's name and dates the environmental		7		tomographic radiograph of the chest, CARD staff
8	health hazards checklist."		8		enter the patient's name, social security number
9			9		and date of birth in the step 1 section of the
10	"The Social Security Administration's		10		environmental health hazards checklist, check the
11	designated deponent must testify whether this is		11		asbestosis box in the impairment section of step 2
12	the SSA approved method of filling out the		12		of the environmental health hazards checklist,
13	environmental health hazards checklist."		13		enter the date the B reader physician made the
14			14		interpretation in the date of diagnosis section of
15	Aside from the testimony that you have		15		step 2, enter the dates the patient was present in
16	already provided, do you have anything additional		16		Lincoln County, Montana in step 3, and the CARD
17	to add in response to paragraph 19?		17		physician prints and signs the CARD physician's
18			18		name and dates the environmental health hazards
19	A	I do. A step 1 is completed by social security.	19		checklist."
20		We fill in the identifying information, and that's	20		"The Social Security Administration's
21		in HI 00803.50.	21		designated deponent must testify whether this is
22	Q	All right. And in terms of section 1, just for	22		the SSA approved method of filling out the
23		the jury's edification and reference, I am looking	23		environmental health hazards checklist."
24		at Exhibit 76, page 4, at the EHH exemplar.	24		First, did I read that accurately?
25		Step 1 is basically the first box on the	25	A	You did read it accurately, excuse me, but for
		EHH form on page 4, is that right?			
	A	Correct.			
	Q	Okay. Anything else to add in response to			
Page 51			Page 52		
1	step 1, social security completes step 1 in that		1	impairment section of step 2 of the environmental	
2	section of policy or on the EHH checklist.		2	health hazards checklist, enter the date the CARD	
3			3	physician made the interpretation in the date of	
4	And as far as step 2 and step 3, you know,		4	diagnosis section of step 2, enter the dates the	
5	our technicians are not going to know the		5	patient was present in Lincoln County, Montana in	
6	background of a B reader. We are just assuming		6	step 3, and the CARD physician prints and signs	
7	that the physician that completed section 2 and		7	the physician's name and dates the environmental	
8	section 3 followed section 1881A of the act and we		8	health hazards checklist."	
9	don't get into the medical interpretations or		9	"The Social Security Administration's	
10	background of this checklist.		10	designated deponent must testify whether this is	
11	Q	All right. Is it fair to say that you rely on	11	the SSA approved method of filling out the	
12		CARD physicians to fill out boxes 2 and 3,	12	environmental health hazard checklist."	
13		sections 2 and 3 of the EHH form truly and	13		Aside from the testimony that you have
14		accurately?	14		already provided, anything else that you feel is
15		MR. KAKUK: Objection, scope.	15		necessary to add in response to paragraph 21?
16	A	Yes.	16	A	Yes. Step 1 is completed by social security
17	BY MR. DUEK:		17		again. Anything within step 2 and step 3, the
18	Q	Okay. Paragraph 21.	18		physician should be following section 1881A of the
19		"When a physician at CARD determines a	19		act. We do not step into that realm of pleural
20		patient has pleural thickening or pleural plaques	20		thickening or pleural plaques. That's outside the
21		by interpretation of a computed tomographic	21		realm of our job.
22		radiograph of the chest, CARD staff enter the	22	Q	Whose job is that?
23		patient's name, social security number and date of	23	A	That is the physician.
24		birth in the step 1 section of the environmental	24	Q	All right. Not SSA's?
25		health hazards checklist, check the pleural	25	A	Correct.
		thickening and pleural plaques box in the			

		Page 53	Page 54
1	Q	Okay.	1 Security Administration's designated deponent must
2	A	We are not qualified to make those determinations.	2 testify whether this is the SSA approved method of
3	Q	All right. And in fact, when it comes to any	3 filling out the environmental health hazards
4		information on section 2 or section 3 of the EHH	4 checklist."
5		form in Exhibit 76, page 4, does SSA based on your	5 Based on your view of paragraph 22 and in
6		review of all the facts in this case wade into any	6 light of the testimony you have provided already
7		of these boxes to double-check, second-guess or	7 today, is there any other response that you need
8		overread what the physicians have placed here from	8 to give?
9		the CARD clinic related to their patients?	9 A Again, step 1 is completed by social security.
10	A	No.	10 Step 2 and step 3 should be followed by the
11	Q	Let's see. I believe I was on paragraph 22. I	11 physician following section 1881A of the act.
12		will read it, and please tell me if I have read it	12 Social security employees do not get involved with
13		correctly.	13 step 2 and step 3.
14		"When a B reader qualified physician	14 Q All right. So looking at the EHH form itself
15		determines a patient has pleural thickening or	15 then, Exhibit 76, page 4, when it comes to making
16		pleural plaques by interpretation of plain chest	16 any notes or any observations or any distinctions
17		x-ray or a computed tomographic radiograph of the	17 in section 2 of the EHH form under the heading of
18		chest, CARD staff enter the patient's name,	18 the column minimum medical evidence required, what
19		social security number and date of birth in the	19 do SSA field staff do when looking at this form
20		step 1 section."	20 based on the factual information you reviewed,
21		I am going to try to speed this up, because	21 anything?
22		I think the beginning of all of these is	22 A They just check to make sure that the individual
23		essentially the same.	23 has a diagnosis that is listed within the EHH
24	A	Okay.	24 checklist, that there is a date of diagnosis,
25	Q	Okay. At the bottom it says again, "The Social	25 step 3 is completed, there is the printed name of
		Page 55	Page 56
1		the physician, the physician's signature and the	1 For example, what if a patient's EHH form
2		date. Outside of that, that's outside of the	2 was filled out completely perfectly and
3		scope of our job.	3 completely, there was a first name, a middle
4	Q	All right. And I don't want to summarize	4 initial, a last name, a social security number and
5		everything inaccurately, but I am going to attempt	5 a date of birth filled out by SSA, and then step 2
6		to, and then tell me if I have done it unfairly.	6 was also completed by the provider with
7		It sounds to me like in terms of this EHH	7 information indicating that a patient had an
8		form, what the SSA field techs are looking for is	8 asbestos-related disease diagnosis.
9		whether there is a diagnosis of an	9
10		asbestos-related condition, is that fair?	10 A Are you with me so far?
11	A	Correct.	11 Uh-huh.
12	Q	Okay. And if there is not an asbestos-related	12 Q All right. Let's also in this hypothetical look
13		condition or an asbestos-related disease, is it	13 at step 3, and is step 3 a section that is also
14		also fair to say based on your review of the facts	14 A filled out by CARD?
15		that that patient isn't eligible for Medicare?	15 Q Correct.
16	A	Correct.	16 Q Okay. And then the bottom of section 3 below
17	Q	Okay. But if the CARD physician has indicated in	17 whether the individual is present in Lincoln
18		section 2 of this form that there is a diagnosis	18 County, Montana during the relevant time period,
19		of an asbestos-related condition caused by	19 there is the section for both the printed name of
20		exposure to Libby asbestos, then the patient is	20 the physician and the CARD physician's signature
21		eligible for Medicare based on the information	21 and a date for that signature, right?
22		you've reviewed, is that fair?	22 A Uh-huh.
23	A	Correct.	22 Q Okay. Is that a yes?
24	Q	Okay. What if the information that's included in	23 A Yes.
25		section 2 is false?	24 Q All right. So in this hypothetical, all of the
			25 information appears to indicate a diagnosis of an

		Page 57	Page 58	
1	asbestos-related condition with a date of	1	that had been marked was in fact untrue or	
2	diagnosis, the presence in Lincoln County, Montana	2	incorrect, would that patient be Medicare eligible	
3	section appears to have been met based on the	3	based on all of the information, the facts and the	
4	information that is there, and there is a doctor's	4	conversations that you had in preparation for your	
5	printed name from CARD, a physician's signature	5	deposition today?	
6	and a date.			MR. KAKUK: Objection, scope. Go ahead.
7	Are you with me?	7	A No.	
8	A Yes.	8	BY MR. DUERK:	
9	Q Okay. Let's say in this hypothetical the	9	Q Okay.	
10	impairment, the box that's checked next to the	10	A And I do want to expand on this a little bit.	
11	diagnosed impairment is asbestosis.	11	Q Sure.	
12	A Okay.	12	A I just recently received some e-mails from CARD	
13	Q Okay. Let's also say that asbestosis has a	13	March 21st, 2023 where I believe it was --	
14	diagnosis code of 5010, is that right?	14	Q Wait. I'm sorry. When?	
15	A Uh-huh.	15	A March 21st, 2023.	
16	Q Is that a yes?	16	Q So this would have been -- today's date is	
17	A Yes, that is correct.	17	May 16th, so you received these less than a month	
18	Q And that the date of diagnosis is filled out with	18	ago?	
19	a handwritten or typed date section.	19	A That they had filled out two checklists for two	
20	A Uh-huh.	20	beneficiaries that they didn't feel were	
21	Q In terms of that information, if SSA through any	21	diagnosed, and I instructed the Kalispell office	
22	means became aware that in fact there was not a	22	to follow the EM 10042REV and deny the claims.	
23	diagnosis of asbestos-related disease or that	23	Q Wait. I'm sorry. So you learned from CARD --	
24	there was not a date of diagnosis of	24	A Just recently in March.	
25	asbestos-related disease or that the impairment	25	Q That two patients --	
		Page 59	Page 60	
1	A I didn't directly. This e-mail was sent to	1	Q All right. In those two cases did those	
2	Terra Whiteman, the Kalispell manager.	2	individuals have a diagnosis of an	
3	Q Okay. And so the e-mail, I think it --	3	asbestos-related disease?	
4	A And this was our first time hearing of it, because	4	A I wouldn't be able -- they stated that they didn't	
5	I have searched all the records all the way back	5	find that these were diagnosed with an	
6	to 2010, so this is the first time ever seeing	6	asbestos-related disease, but they had completed	
7	anything like this come from CARD.	7	the form.	
8	Q All right. There's a good starting place. I'm	8	Q CARD said these cases --	
9	going to have some more questions about this	9	A Correct.	
10	e-mail in a minute, but let's stick with the	10	Q And this happened just recently in March?	
11	hypothetical.	11	A 21st, 2023.	
12	A Okay.	12	Q And SSA's response was to deny the claim?	
13	Q So it sounds like this hypothetical has happened.	13	A Absolutely.	
14	You have learned information that an EHH form	14	Q You seem confident about that. Why was it	
15	completed by CARD was completed inaccurately in	15	absolutely SSA's response to deny the claim?	
16	some way, is that fair?	16	A Because you can't complete an EHH checklist and	
17	A Uh-huh.	17	state that somebody -- marking a person diagnosed	
18	Q Is that a yes?	18	with one of these diseases, but stating that you	
19	A That's a yes.	19	don't feel they are diagnosed with that disease.	
20	Q Okay. And once you learned that that EHH form was	20	As a qualified physician, you are signing	
21	filled out inaccurately, what did you do?	21	off stating that you feel that they have this	
22	What did the Social Security Administration	22	certain diagnosis, and you put the date of	
23	do based on your review of the facts?	23	diagnosis and you completed this form following	
24	A They contacted me, and I instructed them to deny	24	section 1881A of the act.	
25	the claim.	25	Q And SSA is relying on CARD to be true and accurate	

		Page 61	Page 62
1	in these EHH forms?	1	this date of diagnosis that you're signing off on
2	A Correct.	2	it and you're stating that you don't feel that
3	Q And so in this particular instance, somebody at	3	they're diagnosed with this condition, that to us
4	CARD indicated that the EHH form was for patients	4	is fraud.
5	that didn't have a diagnosis?	5	Q In terms of this March 21st, 2023 e-mail, aside
6	A Correct.	6	from this e-mail, based on your review of the
7	Q And SSA's concern or your concern was that the EHH	7	facts, your interviews, your factual inquiry in
8	form that had been submitted was not accurate?	8	this case, have you seen any other correspondence
9	A Correct.	9	from CARD that alerted SSA that it was adopting
10	Q And so as a result what was the conclusion, what	10	this same practice with EHH Medicare claim forms?
11	happened?	11	A No. This is the first e-mail that I have seen.
12	A We denied the claims.	12	And as I mentioned, I went all the way back
13	Q All right. Is that action consistent with what	13	looking through lots of documents and talking to
14	should occur with EHH Medicare claims that are	14	the Kalispell manager, talking to headquarter
15	submitted when the information on them turns out	15	components, looking through the Medicare lead's
16	not to be true about a diagnosis?	16	previous information on EHH claims.
17	MR. KAKUK: Objection, scope.	17	Q And do you recall who at CARD sent this
18	A Correct.	18	March 21st, 2023 e-mail?
19	BY MR. DUERK:	19	A It was a technician under the director.
20	Q Okay. And why do you say that?	20	Q A technician under the director? And do you
21	A Because that would be fraudulently filling out one	21	recall from -- do you know who the director at
22	of these forms. If you bring it to our attention	22	CARD was? Were they listed on this e-mail?
23	that you filled out a form like this, this EHH	23	No, they were not listed on that e-mail.
24	checklist, and that you are marking that this	24	Q Do you have a copy of this e-mail?
25	person is diagnosed with this impairment, with	25	A I'm sure I do.
		Page 63	Page 64
1	Q I'd like to take a short break and obtain a copy	1	from March 21st, 2023, did it include
2	of that e-mail.	2	communication directly from CARD?
3	A Okay.	3	A Yes.
4	THE VIDEOGRAPHER: The time is 11:58 and	4	Q Okay. All right. So here's the situation that
5	we are off the record.	5	I'm in, and perhaps you can answer some of these
6	(Break taken.)	6	questions and help out.
7	THE VIDEOGRAPHER: The time is 12:00.	7	Q I will represent to you that I have
8	We are back on the record.	8	requested any correspondence about any
9	BY MR. DUERK:	9	communication related to a B read only program or
10	Q All right. Ms. Hillmann, I have a few more	10	CARD patients who haven't been diagnosed with
11	questions for you about this e-mail from the	11	asbestos-related disease, but submitted for
12	March 21st, 2023 timeframe.	12	Medicare, and I have been asking for that kind of
13	In terms of any communication around this	13	communication for years from CARD or its
14	issue, and by "issue" I mean CARD submitting EHH	14	individual members or any other sources, and I
15	records with information that was not true on it	15	have not received anything along those lines, and
16	related to a diagnosis of asbestos-related	16	I understand that we are talking about March 21st,
17	disease, are there any communications about this	17	less than a month ago here.
18	topic around this timeframe that you saw from the	18	Q In terms of this topic, was it your intent
19	CARD clinic in your search for information?	19	to try to look for any type of correspondence or
20	A No. The only -- this is the first piece of	20	communication about this topic that came to SSA
21	communication from CARD that covered that piece of	21	from the CARD clinic?
22	material that you were just talking about.	22	A I looked for everything within the subpoena
23	Q Okay.	23	document.
24	A Uh-huh.	24	Q All right.
25	Q In terms of communication from CARD, is the e-mail	25	A Yeah.

		Page 65	Page 66
1	Q	And this one e-mail from March 21st, 2023 was the only document you received?	1 that we now have in front of us a handful of e-mails that I will represent to you I have not seen before today.
2	A	Correct. And this solely just covered the diagnosis.	2
3	Q	All right. Were there any other pieces of correspondence from the CARD clinic that have been forwarded to the SSA recently that you reviewed in preparation for your deposition today?	3
4	A	I believe this correspondence was the only continuing correspondence that I had with Kalispell Montana's district manager.	4
5	Q	Okay.	5 Do you have two e-mail strings in front of you with the lead pages sent Tuesday, April 11th, 2023 and Friday, April 28th, 2023? I tell you what, why don't I give you the stapled copies.
6	A	To my recollection.	6
7	Q	Okay.	7 Yeah.
8		MR. KAKUK: Can we go off the record for a second?	8 A
9		MR. DUERK: Yes.	9 Q
10		THE VIDEOGRAPHER: The time is 12:03.	10 A
11		We are off the record.	11 Q
12		(Break taken.)	12 A
13		THE VIDEOGRAPHER: The time is 1:25. We are back on the record.	13
14		BY MR. DUERK:	14
15	Q	Ms. Hillmann, we have come back from a little bit of a break, and during that break I will represent	15
16		MR. KAKUK: Can we go off the record for a second?	16 Q
17		MR. DUERK: Yes.	17
18		THE VIDEOGRAPHER: The time is 12:03.	18
19		We are off the record.	19
20		(Break taken.)	20
21		THE VIDEOGRAPHER: The time is 1:25. We are back on the record.	21
22		BY MR. DUERK:	22
23	Q	Ms. Hillmann, we have come back from a little bit of a break, and during that break I will represent	23
24		MR. KAKUK: Can we go off the record for a second?	24
25		MR. DUERK: Yes.	25
		Page 67	Page 68
1	BY MR. DUERK:		1 B reader at this time. Someone from our agency or Medicare will be reaching out directly in the next couple of weeks."
2	Q	All right. Let's begin with Exhibit 138, and I apologize if I'm a little slow with this. I am just getting used to this e-mail myself. It appears that the e-mail train begins on page 2 of Exhibit 138.	2
3		Do you see that in front of you?	3
4	A	Yes.	4 Q
5	Q	If you could describe generally what this e-mail string is about to the best of your knowledge.	5
6	A	To the best of my knowledge, what it's conveying is that Stephanie Shaw had some questions for our district manager, Terra Whiteman. Stephanie is from CARD, and Terra was trying to set up a possible time to speak.	6
7	Q	And what was the nature of the topic that CARD wanted to discuss with Terra Whiteman from SSA?	7
8	A	It sounded like they wanted to discuss the EHH checklist in general and, you know, one of Terra's comments was that she relayed the information that Stephanie had conveyed to her to the regional office and "because you are telling me that CARD does not consider the individual diagnosed based on an interpretation by a B reader, we are unable to approve an EHH Medicare claim involving the	8
9	Q	So Ms. Hillmann, does this e-mail address the topic that we were discussing prior to the break about a revelation that certain EHH forms submitted to SSA had untrue or incorrect information on them?	9 A
10	A	Yes.	10 Q
11	Q	Okay. And according to this general timeframe, April 6th, 2023, based on your review of written materials and interviews that you took, based on your factual inquiry, is this roughly the very first time that SSA is learning that some of the EHH forms submitted to its field office have untrue information on them?	11
12	A	Correct.	12
13	Q	Okay. And what was SSA's response, if you can recall?	13
14	A	Well, when Terra actually reached out to me, she explained this to me in a way that they were completing the EHH checklist with a diagnosis as defined under section 1881A, but they truly didn't feel that that individual was diagnosed, that physician that signed the form. And I explained	14
15			15
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25			25

		Page 69			Page 70
1	to her if they're stating that about a specific	1	of, you know, I just assumed maybe this was tied		
2	beneficiary, then we have to deny the claim based	2	up with whatever was going on with the subpoena.		
3	on policy.	3	Okay. And in terms of the subpoena, are we		
4	Q Okay. And this is information related to a	4	talking about the subpoena for your deposition		
5	conversation between you and Terra or you and	5	testimony?		
6	CARD? I'm sorry, if you could clarify.	6	A Absolutely.		
7	A So Stephanie Shaw who reached out to Terra and	7	Q Today?		
8	they eventually talked by phone had this	8	A Yes.		
9	conversation, so Stephanie Shaw is from CARD, and	9	Q Okay. So prior to this timeframe, and I am		
10	she was explaining this to Terra who is our	10	including today in this timeframe because,		
11	district manager in Kalispell, Montana.	11	frankly, we are at May 16th and these e-mails are		
12	And then Terra told her that she needed to	12	dated in April, this is the first you've heard		
13	talk to the regional office Medicare expert, which	13	about EHH forms that have incorrect information?		
14	I am, and then I explained how the policy reads	14	A Absolutely.		
15	and how we would have to deny the claims, and that	15	Q Okay.		
16	was our official response.	16	A And in my position I have been doing this since		
17	Q Had this type of issue from CARD ever been	17	2018, and prior to that I looked through all of		
18	elevated to you before?	18	Kathy's stuff, and I haven't seen any kind of		
19	A No. This is the first time I'm seeing anything	19	correspondence like this.		
20	like this.	20	Q So no correspondence that you're aware of --		
21	Q In 2023?	21	A Correct.		
22	A Exactly.	22	Q -- through your inquiry had elevated this issue to		
23	Q Did it cause any surprise?	23	your awareness related to EHH forms submitted to		
24	A It did, but, you know, by that time I think we	24	the Social Security Administration field office		
25	were aware of the subpoena, so it was just kind	25	with untrue information on it?		
		Page 71			Page 72
1	A Correct.	1	or anyone else at SSA as far as you were aware		
2	Q In terms of you spoke a moment ago about I think a	2	that CARD was knowingly submitting EHH forms in		
3	conversation between or among CARD staff and SSA	3	support of Medicare beneficiary status for		
4	in which there was some claim that the CARD	4	patients who did not have a diagnosis of		
5	employees felt that a patient wasn't diagnosed.	5	asbestos-related disease prior to April of 2023?		
6	Did I hear that correctly?	6	A No.		
7	A Correct.	7	Q Did CARD ever submit any correspondence authored		
8	Q Okay. And if you could share with me any factual	8	by CARD to the effect that CARD was knowingly		
9	information you're aware of on that basis, what	9	submitting patients for Medicare benefits who CARD		
10	was CARD essentially sharing with SSA about this	10	knew did not have a diagnosis of asbestos-related		
11	category of patients?	11	disease?		
12	A Well, as I was previously mentioning, they just	12	A Prior to that date?		
13	basically said that they completed the checklist,	13	Q Prior to this timeframe in 2023.		
14	but they didn't feel that person was diagnosed	14	A No.		
15	with that actual EHH diagnosis, the physician that	15	Q For example, I would like you to turn to		
16	signed the form, and with that statement I told	16	Exhibit 7, I'm sorry, tab 7 in your book.		
17	and I instructed the Kalispell manager that we	17	A Okay.		
18	cannot approve that claim.	18	Q Do you see Exhibit 123 in front of you?		
19	Q Okay. I want to be very clear about what specific	19	A Yes.		
20	information may have been shared with SSA during	20	Q Now, what is the date at the top of this page?		
21	that timeframe outside of a feeling that perhaps	21	A May 18, 2015.		
22	this patient didn't have a diagnosis according to	22	Q Okay. And do you see CARD's letterhead?		
23	CARD employees. Okay?	23	A I do.		
24	A Uh-huh.	24	Q Now, I would like to ask some questions about		
25	Q Ms. Hillmann, at any time did CARD disclose to you	25	this. I believe this will already have been		

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1	admitted into evidence. Ms. Hillmann, if you	1	A	"We are notifying you of the finding because any
2	would read the first paragraph here.	2		type of abnormality identified by the outside
3	A Okay. "You participated in an asbestos health	3		reader, even if it not a diagnosis of an
4	screening on 12-11-2014, and at that time you were	4		asbestos-related disease, qualifies you for
5	not diagnosed with an asbestos-related disease	5		certain medical benefits."
6	(ARD). You received a letter at the conclusion of	6		"You are now eligible for Medicare benefits
7	your appointment that informed you that your chest	7		regardless of your age based on these findings.
8	x-ray and CT would be sent out for a second read	8		If you choose to enroll in Medicare, you would
9	by other doctors specially trained in reading	9		also be eligible for the Medicare Pilot Program
10	radiographic images for dust diseases like	10		for ARD that covers medically necessary services
11	asbestos."	11		not covered by usual medical insurance programs.
12	Q Okay. If you would continue reading the second	12		An example would be mileage, fitness club
13	paragraph.	13		memberships, assistance with daily living.
14	A Okay. "One of these doctors did identify a small	14		Information about these programs is enclosed."
15	abnormality on the CT image. It is nothing that	15	Q	The next paragraph.
16	has significant health implications, nor is it	16	A	"In addition, you can continue to be eligible for
17	considered a diagnosis of an asbestos-related	17		free ongoing screenings for asbestos-related
18	disease."	18		disease through the CARD screening program."
19	Q All right. If you'd read the next paragraph.	19	Q	Ms. Hillmann, have you ever seen a letter like
20	A "A diagnosis of asbestos-related disease is based	20		this?
21	on exposure histories, time since exposure,	21	A	No.
22	medical provider assessment and radiographic	22	Q	From CARD in any respect?
23	images. The reader who identified the abnormality	23	A	No.
24	did not have the rest of this information."	24	Q	Has CARD ever sent to you any correspondence
25	Q The next paragraph, please.	25		remotely similar to this about any of their
Page 75				Page 76
1	patients?	1		disclosing that CARD was telling patients that
2	A No.	2		they were eligible for Medicare without a
3	Q What does this letter indicate to you about the	3		diagnosis of asbestos-related disease?
4	individual patient here in terms of whether or not	4	A	No.
5	they have a diagnosis of asbestos-related disease?	5	Q	Would you or anyone else at the
6	MR. KAKUK: Objection, scope.	6		Social Security Administration based on your
7	MR. BECHTOLD: Foundation.	7		factual inquiry have ever written a letter like
8	BY MR. DUERK:	8		this to CARD teaching them, training them,
9	Q Let me put it this way.	9		instructing them that this practice of submitting
10	If you were to see correspondence from CARD	10		patients for Medicare benefits without a diagnosis
11	indicating that they were telling patients that	11		of ARD was appropriate, proper or authorized by
12	that patient was eligible for social security EHH	12		the Social Security Administration?
13	Medicare benefits even though that patient did not	13	A	No.
14	have a diagnosis of asbestos-related disease,	14	Q	Why not?
15	would you find that troublesome?	15	A	Because that's outside of the scope of our job.
16	A Yes.	16	Q	If we could turn to what I would like to mark as
17	Q Why?	17		Exhibit 139, the e-mail dated at the top Friday,
18	A Because that would be a denial. We shouldn't be	18		April 28th, 2023, that would be helpful.
19	putting individuals on EHH Medicare that don't	19		(WHEREUPON, Deposition Exhibit 139
20	have the proper diagnosis under section 1881A of	20		marked for identification by the reporter.)
21	the act.	21	BY MR. DUERK:	
22	Q Based on all of the information that you uncovered	22	Q	Ms. Hillmann, is Exhibit 139 an e-mail train that
23	during the course of your inquiry, did you ever	23		you have seen before today?
24	see any correspondence from CARD or any e-mails,	24	A	Yes.
25	any other documentation prior to this timeframe	25	Q	And is Exhibit 139 and the e-mail train here from

				Page 77	Page 78
1		approximately the end of April 2023 and earlier		1	Q Okay. If you would please read this e-mail from
2		part of the same conversation that is related to		2	Tracy McNew to Terra Whiteman on April 12th that
3		this March 21st, 2023 timeframe?		3	would be helpful.
4	A	Correct.		4	A Okay. "Hi Terra. My name is Tracy McNew. I am
5	Q	Okay. And that timeframe, I will just represent		5	the executive director of the CARD clinic. Thanks
6		to you, is it fair to say this timeframe is the		6	for your e-mail to Stephanie Shaw about EHH
7		first information you had heard of from CARD that		7	checklists indicating that SSA will no longer be
8		they were submitting people to Medicare or SSA for		8	approving Medicare based on positive reads by
9		Medicare benefits under the EHH program without a		9	B readers."
10		diagnosis?		10	Q If I could stop you right there, first of all, is
11	A	Yes.		11	it true that SSA would no longer be approving
12	Q	I would like to focus on the e-mail in the		12	Medicare based on positive reads by B readers,
13		beginning of this train, so page 3 of Exhibit 139,		13	that is to say are you aware that prior to this
14		an e-mail from Tracy McNew dated April 12th, 2023.		14	time or are you aware of whether or not SSA ever
15		First off, who is Tracy McNew?		15	had a practice of approving Medicare benefits
16	A	She is the executive director of the CARD clinic.		16	based only on positive B reads?
17	Q	And who is Terra Whiteman again?		17	MR. KAKUK: Objection, scope. Go ahead.
18	A	Terra Whiteman is the Kalispell district manager.		18	A Again, that's outside of the scope of the realm of
19	Q	Okay. And what is your understanding of how this		19	my job. Honestly, I think this e-mail transpired
20		e-mail originated, if you know?		20	from a misinterpretation of what Terra was trying
21	A	I believe this particular e-mail actually		21	to convey to Tracy's employee at CARD.
22		originated from this Exhibit 138.		22	Q If you could explain, that would be helpful.
23	Q	Okay. So the two Exhibits 138 and 139 are tied		23	A Yeah. So Terra came back, and I believe it was in
24		together, is that fair?		24	this e-mail, and she just explained to them that
25	A	Yeah.		25	she conferred with the regional office, and
				Page 79	Page 80
1		because you're telling me that CARD does not		1	SSA that they were engaging in this practice of
2		consider the individual diagnosed based on		2	submitting CARD patients for Medicare benefits on
3		interpretation by a B reader, we are unable to		3	a B read alone prior to this period?
4		approve EHH Medicare claims involving a B reader		4	A No.
5		at this time, but this was a phone conversation		5	Q Okay. It sounds to me from the second sentence of
6		where they basically laid out that the physician		6	this e-mail, April 12th, 2023, Exhibit 139, that
7		was completing the EHH checklist, but did not feel		7	Tracy McNew is saying that SSA will no longer be
8		that that person was diagnosed, so I think there		8	approving Medicare based on positive reads by
9		was some misinterpretation here from the		9	B reads.
10		phone call with Terra to Stephanie to what was		10	Do you see that sentence?
11		relayed to Tracy.		11	A I do see that sentence, yes.
12	Q	All right. So in any event, in terms of this		12	Q Okay. And just so that we are clear, have you
13		e-mail on Exhibit 139, page 3, is this the first		13	seen any materials anywhere ever from CARD that
14		that SSA is learning based on your factual		14	indicate that this was an approved practice by the
15		investigation of the matter that CARD is		15	Social Security Administration?
16		apparently submitting EHH checklists based on		16	A No.
17		positive B reads alone?		17	Q And you seem certain of that. Why?
18	A	This is the first time that I'm hearing about it		18	A Just because I -- I mean, we don't, again, we
19		from the original time that Terra contacted me.		19	don't go outside the realm of that EHH checklist.
20	Q	And the original time that Terra contacted you		20	We don't get into the B reader part of this or
21		again was April of 2023?		21	anything that has to do with the medical
22	A	Correct.		22	interpretations or anything to do with that. We
23	Q	And prior to that time were you aware of any		23	are not medical experts.
24		correspondence, any communication of any kind from		24	So the conversation between Terra and
25		CARD in any way in which CARD had disclosed to the		25	Stephanie seems to be misconstrued here within

		Page 81			Page 82
1	this e-mail. Terra was trying to convey that this		1	Was there any change in SSA's position	
2	employee said that this physician completed the		2	regarding Medicare eligibility based on positive B	
3	EHH checklist even though they did not agree with		3	reads that you could find in any of your factual	
4	the diagnosis, and that to us is a denial for EHH		4	inquiry?	
5	Medicare.		5	MR. KAKUK: Objection, scope. Go for	
6	Q And is that because that individual patient does		6	it.	
7	not have a diagnosis of asbestos-related disease?		7	A No, and I think Terra cleared that up in her	
8	A Correct.		8	e-mail that's dated April 26th, 2023.	
9	Q Okay. Further down in this e-mail of April 12th,		9	Q Let's turn to that e-mail.	
10	2023 there is another sentence that I would just		10	A Okay.	
11	like to read to you, and please tell me if I have		11	Q Are you looking at page 1 of Exhibit 139?	
12	read it correctly. Okay?		12	A I believe it's page 2, correct? Yeah, page 2.	
13	A Uh-huh.		13	Q Page 2? Okay. I am looking at an e-mail sent	
14	Q That sentence begins about midway down this		14	Wednesday, April 26th, 2023 at 2:47 PM.	
15	e-mail.		15	Am I looking at the right one?	
16	It says, "Just to be clear, SSA has now		16	A Correct.	
17	changed its position regarding Medicare		17	Q Okay. If you would please read it.	
18	eligibility based on positive B reads, and CARD		18	A "Good afternoon, Tracy. I wanted to get you an	
19	should no longer fill out EHH forms for patients		19	interim answer to this e-mail. I think there may	
20	with no CARD diagnosis even if they have a		20	be confusion. Stephanie reached out to SSA and	
21	positive outside B read or CT read."		21	made us aware that CARD does not consider the	
22	Is that correct? Did I read that		22	patients as diagnosed despite signing off on the	
23	accurately?		23	checklist when a B reader is involved. SSA has	
24	A You did.		24	not changed any of its rules. I am forwarding	
25	Q Okay. So now I just want to be clear.		25	your information to our center for program support	
		Page 83			Page 84
1	so they can address any of your concerns. I will		1	Social Security Administration ever train or teach	
2	have them reach out to you directly. Thank you."		2	or authorize this practice with CARD from 2010 at	
3	Q So is this the e-mail that clarifies that there		3	any time?	
4	has been no change in SSA policy?		4	A No.	
5	A Yes.		5	Q The way that we got into this line of questioning	
6	Q Okay. When were you asked to look at these		6	initially during your deposition today, I want to	
7	e-mails?		7	try to return to that point. If I remember	
8	A I believe sometime in April. I think that was		8	correctly, we were walking through the different	
9	whenever Terra connected with Stephanie and		9	paragraphs that you were asked to respond to in	
10	Stephanie had that question.		10	the subpoena.	
11	Q And at any time prior to you looking at these		11	Q Do you recall that part of your testimony?	
12	e-mails had anyone from CARD to the best of your		12	A Yes.	
13	knowledge approached anyone at the		13	Q Okay. I would like to return to that part of the	
14	Social Security Administration outside of what we		14	inquiry, but before we leave off here, when this	
15	are seeing here to ask questions about a practice		15	topic first came up, you used the word "fraud."	
16	of submitting B read only patients for Medicare		16	Q Do you recall that?	
17	benefits to SSA?		17	A Yes.	
18	A I mean, I can't really speak on that. I know		18	Q What was your meaning?	
19	there was continuing correspondence with Terra and		19	Q What were you describing when you used that	
20	then I believe the executive director and		20	word?	
21	Stephanie, but I don't know if it was directly		21	A Fraud means you are completing a form like to me	
22	related to that.		22	it would be illegally, and you're signing off on a	
23	Q At any point, and I think we have covered this,		23	diagnosis that you don't believe this person is	
24	but at any point to the best of your knowledge		24	diagnosed so they can get onto Medicare benefits,	
25	according to your factual inquiry did the		25	so that to me is a clear indication of fraud.	

		Page 85			Page 86
1	Q	And when you reviewed this e-mail train in Exhibits 138 and 139 about CARD's practices of submitting patients without a diagnosis for Medicare benefits, did you have concerns that this was fraudulent?	1	Q	Okay. And you are aware of no more than just those two patients from the spring of 2023?
2			2	A	Correct.
3			3	Q	At any time has CARD disclosed to you how many patients actually fell into this category or fall into this category?
4			4	A	I've had no direct correspondence with CARD and I don't believe that to my knowledge, and I have asked Terra, that they have reported anybody outside of those two beneficiaries.
5			5	Q	Those two beneficiaries from the spring of 2023?
6		MR. KAKUK: Objection, scope.	6	A	Correct.
7	A	I did have concerns, but now that it was on our radar, we did make it clear to them that if they were completing any checklists that they didn't agree that person had a diagnosis that we would be denying them and that they need to make us aware of that.	7	Q	Okay. Back to the subpoena, again, I am looking at what has been marked as Exhibit 135. I think we made it to paragraph 22.
8			8	A	Okay.
9			9	Q	And just so that I'm clear, once you've had a chance to review paragraph 22, is there anything else that comes to mind that you have to offer in response to paragraph 22 that we haven't talked about today?
10			10	A	So on paragraph 22, again, step 1 is completed by social security, and then CARD is to complete step 2 and step 3 following section 1881A of the act. As far as the specifics, social security
11			11	Q	
12			12	A	
13	Q	And when you asked for CARD to make you aware of any of those cases, did CARD disclose to you how many cases they have done this in, for how many individual CARD patients?	13	Q	
14			14	A	
15			15	Q	
16			16	A	
17	A	I didn't directly talk to CARD, but Terra relayed that information, and to my knowledge there was no such reply.	17	Q	
18			18	A	
19			19	Q	
20	Q	Okay. So to the best of your knowledge based on your factual inquiry as you sit here today as far as you are aware there are two patients whose EHH forms were submitted when CARD knew that patient did not have an ARD diagnosis?	20	A	
21			21	Q	
22			22	A	
23			23	Q	
24			24	A	
25	A	Correct.	25	Q	
		Page 87			Page 88
1		employees or technicians do not get into the specifics of the medical condition listed on the EHH checklist.	1	A	I do not.
2			2	Q	Okay. So to the best of your knowledge based on your factual inquiry, did you see evidence that the Social Security Administration gave an award to CARD for CARD's exemplary cooperation with the SSA in implementing the amendments enacted by the Affordable Care Act?
3			3	A	I did not, but as I previously mentioned, there could have been a regional award. Our Regional Commissioner Mary Lisa Lewandowski did mention that there was a potential that a regional commissioner award was given out.
4	Q	In terms of paragraph 22, when a B reader qualified physician determines a patient has pleural thickening or pleural plaques by interpretation of plain chest x-ray or computed tomographic radiograph of the chest, SSA staff doesn't wade into those facts to determine whether or not what SSA is being told by CARD qualifies as a diagnosis or not.	4	Q	Okay.
5			5	A	But she had no record of it.
6			6	Q	All right. And you communicated with Mary Lewandowski about that?
7			7	A	Correct.
8			8	Q	Okay. Paragraph 26.
9			9		"The Social Security Administration's designated deponent must testify why the Social Security Administration gave an award to CARD for CARD's exemplary cooperation with the Social Security Administration in implementing the amendments enacted by the Affordable Care Act."
10			10		
11			11		
12			12		
13		That's left up to the CARD physician to state on the EHH form, is that fair?	13		
14	A	Correct.	14		
15	Q	Okay. Turning to paragraph 25, I will read it and please tell me if I have read it correctly.	15		
16			16		
17			17		
18			18		
19			19		
20			20		
21			21		
22			22		
23			23		
24			24		
25		I think we have heard some of your testimony here. Do you have anything more to offer on that topic?	25	A	What response do you have?
					Well, I think that, you know, again, this aligns

		Page 89	Page 90
1	with section 1881A of the act. The physicians are	1	filling out environmental health hazards
2	completing these checklists and, you know,	2	checklists for them. Meanwhile, B readers who
3	following the guidelines of that act in order for	3	interpret chest x-rays and outside readers who
4	these beneficiaries to be put on EHH Medicare. If	4	interpret CT scans do not make clinical diagnoses
5	they're not diagnosed with one of those	5	because they never see the patients in a clinical
6	conditions, then they will not be put on EHH	6	setting, but rather make interpretations of x-rays
7	Medicare.	7	and CT scans."
8 Q	And in terms of a physician's determination,	8	First, did I read that correctly?
9 again, with the diagnosis, it's the physician at		9 A	Yes.
10 CARD who fills out the EHH form, is that right?		10 Q	Okay. In terms of your factual review of all the
11 A	Correct.	11	information and material that was available to you
12 Q	And is SSA relying on the provider or the CARD	12	from SSA, do you have any comment on the first
13 physician to communicate whether there is a		13	part of paragraph 27 or is this something that
14 diagnosis of asbestos-related disease or not to		14	only a physician would know?
15 SSA?		15 A	I believe only a physician would know.
16 A	Correct.	16 Q	All right. The second part of paragraph 27.
17	MR. KAKUK: Objection, scope.	17	"Do the positive interpretations of these
18 A	Sorry. Correct.	18	non-CARD physicians qualify as diagnoses for
19 Q	Anything else to offer on paragraph 26 aside from	19	purposes of the environmental health hazards
20 what's already been covered?		20	checklists even though they are not clinical
21 A	No.	21	diagnosis."
22 Q	Okay. Paragraph 27.	22	The same questions. Is this information
23	"Because CARD physicians actually see	23	information that you are able to obtain through
24 patients in a clinical setting, CARD physicians		24	your factual review of the file, interviews with
25 make clinical diagnoses of the patients prior to		25	SSA employees or any other sources?
		Page 91	Page 92
1 A	Again, this would be outside the expertise of our	1 A	You did.
2 position as technicians and as a Medicare lead.		2 Q	In terms of the first part of response for
3 Q	All right. In your mind based on your review of	3	paragraph 28, is information about CARD physicians
4 the facts is the answer to this question better		4	clinically diagnosing patients compared to
5 left to the CARD clinicians?		5	B readers interpreting CTs and x-rays, is that
6 A	Correct.	6	anything that is within your purview as an SSA
7 Q	Okay. Paragraph 28.	7	employee?
8	"Many patients whom CARD physicians have	8 A	No.
9 not clinically diagnosed with asbestos-related		9 Q	Do you have any response to paragraph 28 other
10 disease are found to have positive interpretations		10	than what you just said or what we've been
11 of chest x-rays for asbestosis or pleural plaques,		11	discussing today?
12 pleural thickening by B reader qualified		12 A	No.
13 physicians or positive interpretation of CT scans		13 Q	Okay. Paragraph 29.
14 for asbestosis or pleural plaques or pleural		14	"Does the EHH checklist form referenced in
15 thickening by other qualified physicians."		15	SSA POMS section HI 00803.001 and .050 indicate
16	"Based on these outside interpretations,	16	that step 2 of the form is to be completed by a
17 CARD fills out environmental health hazard		17	healthcare provider who will identify the
18 checklists for these patients, a CARD physician		18	asbestos-related conditions and its date of
19 signs the checklist, and CARD submits the		19	diagnosis."
20 checklist to SSA."		20	Other than shortening those policy
21	Did I read that correctly?	21	sections, did I read this correctly?
22 A	Yes.	22 A	Yes.
23 Q	The question, is this the proper course of action	23 Q	Have you addressed this topic already in your
24 for CARD for these patients, did I read that		24	testimony?
25 correctly?		25 A	I believe so.

			Page 93	Page 94
1	Q	Is there anything else that needs to be covered here in your view?	1	A You did.
2	A	No.	2	Q And what is the answer?
3	Q	Turning to paragraph 36 of the subpoena.	3	A With my correspondence with manager Terra Whiteman, we have never instructed CARD on how to complete an EHH checklist or go over the medical factors that are involved. It's outside of our purview.
4		"Has anyone at CARD informed the SSA field office in Kalispell that CARD patients do not need to have a diagnosis of asbestos-related disease in order to qualify for federal benefits."	4	
5		Did I read that correctly?	5	8 Q All right. And based on what you've learned from Terra Whiteman about her response to this B read only program, have you ever seen anything from Terra Whiteman that would indicate to you that she would have instructed CARD that patients do not need to have a diagnosis of asbestos-related disease in order to qualify for federal benefits?
6	A	Yes.	6	9 A No.
7	Q	Aside from these e-mails from the timeframe of March and April of 2023 which we have covered, has anyone at CARD informed the SSA field office in Kalispell that CARD patients do not need to have a diagnosis of asbestos-related disease in order to qualify for federal benefits?	7	10 Q And why not?
8	A	No.	8	11 A MR. KAKUK: Objection, scope.
9	Q	Anything else on that topic?	9	12 A There is no record of that, and that's not within policy. There would be no reason for her to instruct her technicians on what a qualified physician does by following section 1881A of the act as it's outside the purview of our positions.
10	A	No.	10	13 Q All right. Paragraph 28, and I will just ask the question. Has any employee at the SSA field office in Kalispell instructed anyone that CARD
11	Q	Response 37. "Has any employee at the SSA field office in Kalispell instructed CARD that patients do not need to have a diagnosis of asbestos-related disease in order to qualify for federal benefits."	11	14 A
12		Did I read that correctly?	12	15 A
13			13	16 Q
14			14	17 A
15			15	18 A
16			16	19 A
17			17	20 A
18			18	21 A
19			19	22 A
20			20	23 Q
21			21	24 A
22			22	25 A
23			23	
24			24	
25			25	
			Page 95	Page 96
1		patients qualify for Medicare benefits on a B read chest x-ray interpretation of a lung abnormality unrelated to asbestos exposure and without a diagnosis of asbestos-related disease?	1	1 A marked for identification by the reporter.)
2	A	No.	2	2 BY MR. DUERK:
3	Q	Paragraph 39. Has anyone at CARD informed the SSA that it has submitted in excess of 100 EHH forms signed by Dr. Black to the Social Security Administration field office in Kalispell on behalf of CARD patients when CARD had actual knowledge that those patients had not been diagnosed with asbestos-related disease?	3	3 Q Okay. I would like to show you now what I am marking as Exhibit 137, tab 8 in your book.
4	A	This my first time seeing this, I think, besides reading the subpoena. Hold on. To my knowledge, no.	4	4 A Do you see Exhibit 137 in front of you?
5	Q	Earlier I asked about whether or not CARD had disclosed certain facts to the Social Security Administration about the B read only program or about the topic of submitting undiagnosed patients to the SSA field office for Medicare benefits without asbestos-related disease diagnoses.	5	5 A Yes.
6		Do you recall that line of questions?	6	6 Q I will represent to you that this document, document 110, has been filed in federal court in front of the trial judge in this matter.
7	A	Yes.	7	7 A Okay.
8		(WHEREUPON, Deposition Exhibit 137	8	8 Q I will also represent to you that there are several statements of fact here that are undisputed by the CARD clinic.
9			9	9 A Okay.
10			10	10 A
11			11	11 Q
12			12	12 A
13			13	13 Q
14			14	14 A
15			15	15 Q
16			16	16 Q
17			17	17 A
18			18	18 Q During your factual investigation and inquiry did you see any documents or obtain any statements from any witnesses or learn any information that indicated that CARD had submitted these statements to the SSA at any time from 2010 until the spring of 2023?
19			19	19 A
20			20	20 Q
21			21	21 A
22			22	22 Q
23			23	23 A
24			24	24 Q
25			25	25 A

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1 A	Okay.		1 Q	The next statement.	
2 Q	So the first one, I will read it, and please tell me if I have read it correctly.		2	"CARD continues its practice of submitting patients EHH forms to Social Security Administration who do not have a diagnosis of asbestos-related disease. Undisputed."	
3			3		
4	"CARD has submitted EHH forms to the Social Security Administration when CARD providers were aware that the individual patient did not have a clinical diagnosis of asbestos-related disease. Undisputed."		4		
5			5		
6			6	Prior to the spring of 2023 based on your factual inquiry did you ever see that CARD submitted this statement to the SSA?	
7			7		
8			8	No.	
9			9 A	The next statement.	
10	Ms. Hillmann, to the best of your knowledge based on your factual inquiry, did you see any evidence that CARD prior to March and April of 2023 had ever submitted any kind of statement like this to the social security administration?		10 Q		
11			11	"CARD has submitted patients without a diagnosis of asbestos-related disease to the Social Security Administration for Medicare benefits since at least 2013 and presumably since the Affordable Care Act was passed in 2010. Undisputed."	
12			12		
13			13		
14 A	No.		14		
15 Q	The next statement. "Dr. Black, Tanis Hernandez and Tracy McNew knew about CARD's practice of submitting patient EHH forms for Medicare benefits to social security for patients who did not have a diagnosis of asbestos-related disease. Undisputed that this is Ms. Hernandez's testimony."		15		
16			16		
17			17	The same question. Ms. Hillmann, at any time prior to the spring of 2023 did you see that CARD had submitted any statements like this to the Social Security Administration for any purpose, for guidance, for response, for training, for any reason?	
18			18		
19			19		
20			20	No.	
21	Prior to the spring of 2023 or at any time, frankly, based on your factual inquiry did you come across information that CARD had submitted a statement like this for SSA to consider?		21	The next statement.	
22			22		
23			23 A	"CARD submitted an EHH form on multiple	
24			24 Q		
25 A	Prior to the spring of 2023, no.		25		
Page 99			Page 100		
1	patients' cases based on a B read alone when CARD's current medical director knew those patients did not have an asbestos-related disease diagnosis." Response, undisputed.		1	Social Security Administration in support of Medicare benefits for patients who had no clinical diagnosis of asbestos-related disease.	
2			2		
3			3		
4			4	Undisputed."	
5	Did I read that correctly?		5	Did I read that correctly with the changes indicated here?	
6 A	Yeah.		6		
7 Q	The same question, Ms. Hillmann.		7 A	Yes.	
8	At any point to your knowledge did CARD submit this statement to the Social Security Administration?		8 Q	Prior to the spring of 2023, did CARD ever come forward to the Social Security Administration telling the Social Security Administration that they planned to do something like this?	
9			9		
10			10		
11 A	No.		11	No.	
12 Q	The next statement.		12 A	"CARD has been signing EHH forms for patients without a clinical diagnosis since the federal grant started."	
13	"CARD's medical director testified multiple patients' EHH forms were submitted to the Social Security Administration for Medicare benefits even though they did not have a CARD diagnosis of asbestos-related disease." Response, undisputed.		13 Q		
14			14		
15			15		
16			16	Did I read that correctly?	
17			17 A	Yes.	
18	Ms. Hillmann, the same question.		18 Q	The response, undisputed.	
19			19	Did I read that correctly?	
20	At any time prior to the spring of 2023 did you come across any information indicating that CARD had come forward with this statement to the Social Security Administration?		20 A	Yeah.	
21			21 Q	During your factual investigation into this matter did you come across any evidence that CARD had ever shared anything remotely like any of these statements, including the one I just read, to the Social Security Administration?	
22			22		
23 A	No.		23		
24 Q	The next statement.		24		
25	"CARD knowingly submitted EHH forms to the		25		

		Page 101	Page 102
1	A	Prior to April of 2023, no.	1 (WHEREUPON, Deposition Exhibit 140
2	Q	I'd like to take a short break.	2 marked for identification by the reporter.)
3		THE VIDEOGRAPHER: The time is 2:13. We	3 (WHEREUPON, Deposition Exhibit 141
4		are off the record.	4 marked for identification by the reporter.)
5		(Break taken.)	5 BY MR. DUERK:
6		THE VIDEOGRAPHER: The time is 2:34. We	6 Q Okay. So just a couple of clarifications. I want
7		are back on the record.	7 to put in front of you what I have marked or what
8		BY MR. DUERK:	8 the court reporter has marked as Exhibit 140 and
9	Q	All right. After a short break, I am looking at	9 141.
10		the subpoena for trial testimony and all of the	10 I will represent to you that each of these
11		topics and paragraphs that we have attempted to	11 exhibits represent the updated POMS for the
12		cover today from paragraphs 17 to 22, paragraphs	12 sections that we have been covering during your
13		25 to 29 and paragraphs 36 to 39.	13 testimony today.
14		Ms. Hillmann, have we now covered your	14 Is that an accurate characterization in
15		responses to each of the paragraphs as set forth	15 your mind?
16		in the subpoena to the SSA?	16 A Yes.
17	A	Yes.	17 Q Okay. Let's start with Exhibit 140. This is
18	Q	Okay. I've got a few clarifications, but in terms	18 essentially the same POMS as Exhibit 75, POMS
19		of any substantive response in terms of the topics	19 008031.001, Hospital Insurance Entitlement for
20		covered in the subpoena to the SSA, have we now	20 Individuals Exposed to Environmental Health
21		essentially covered any response that you might	21 Hazards.
22		have based on your factual review of the evidence	22 Is that fair?
23		and the underlying records that you examined in	23 A Yes.
24		your inquiry?	24 Q Okay. Based on your review of the earlier POMS
25	A	Yes.	25 published in Exhibit 75, is the same POMS section
		Page 103	Page 104
1		in Exhibit 140 different in any material way that	1 EHH Medicare.
2		you see?	2 Do you see any changes in the new version
3		MR. KAKUK: Objection, scope. Go ahead.	3 that jump out at you other than pronoun changes?
4		MR. BECHTOLD: Objection, foundation.	4 MR. KAKUK: The same objection.
5		BY MR. DUERK:	5 A No.
6	Q	First of all, have you had a chance to look at	6 Q Okay.
7		each of these?	7 MR. BECHTOLD: Foundation.
8	A	I looked at 141, but I haven't fully looked at	8 BY MR. DUERK:
9		140, but I am assuming that it was due to the	9 Q All right. There were some questions about this
10		pronoun changes that we made.	10 timeframe from March 21st, 2023 and then the
11	Q	Okay.	11 e-mails that we examined from the April 2023
12	A	Yeah, that was part of that change.	12 timeframe.
13	Q	And again, I am not asking for any substantive	13 What can you tell us about the difference
14		policy differences that may be included here.	14 between the March dates and the April dates and
15	A	Okay.	15 why is there a disconnect in that timeframe?
16	Q	In fact, my question is geared towards showing the	16 A The timeframe between the e-mails?
17		opposite to be true, if it is.	17 Q Not necessarily the timeframe between the e-mails,
18	A	Yeah.	18 but the timeframe, the period of time between
19	Q	Did you notice anything aside from pronoun changes	19 March 21st and those e-mails.
20		or other grammatical changes that are apparent from	20 A Well, I mean, I believe that's when the
21		the print in front of you?	21 correspondence started, but based on -- I might
22	A	No.	22 have been incorrect about the date, but based on these e-mails, basically this is just one string
23	Q	The same question related to the other POMS	23 of e-mails that I have been continuing to get from
24		section from Exhibit 76, POMS section 00803.050,	24 Terra regarding her correspondence with CARD.
25		Developing Medical Requirement for Entitlement to	25

		Page 105	Page 106
1	Q	Okay.	1 correct?
2	A	Yeah.	2 A Yes.
3	Q	And in terms of where things left off with this e-mail train, based on your last review of e-mails, have we now looked at all of the e-mails on this topic that you had access to to the best of your recollection?	3 (WHEREUPON, Deposition Exhibit 136 4 marked for identification by the reporter.) 5 BY MR. DUERK:
8	A	To the best of my recollection. There might be additional ones that, you know, CARD had sent from this date just kind of expanding on an earlier e-mail, but to my recollection I believe this is, you know, the majority of the question.	6 Q And that declaration is at tab 2, and I will ask 7 that we mark this declaration as Exhibit 136. 8 Do you see Exhibit 136 in front of you?
13	Q	Okay.	9 A Yes.
14	A	Yeah.	10 Q Ms. Hillmann, is this your declaration?
15	Q	And in terms of the initiation or how this question first came to light, is it your understanding that it came to light because of phone communication, not e-mail communication?	11 A Yes.
19	A	Correct.	12 Q And if you would take a look through it, I believe we have covered the topics outlined in this declaration.
20	Q	Okay. And might that in part explain the little bit of time connect between March 21st, 2023 and the e-mails that we see in April?	13 Is that your understanding also?
23	A	Yes.	14 A Correct.
24	Q	Okay. The last thing that I'd like to cover is you submitted a declaration in this case, is that	15 Q Okay. There is one specific section here that I'd like you to focus on. Do you see paragraph 7? 16 A Yes. 17 Q Okay. Is it still true that POMS section 18 HI 00803000, et seq, meaning the entire section or 19 those that follow, those sections titled Medicare 20 entitlement for individuals exposed to 21 environmental health hazards (EHH) are based on 22 and mirror language from the Affordable Care Act?
		Page 107	Page 108
1		MR. KAKUK: Objection, scope.	1 I do appreciate their disclosure today.
2	A	Yes.	2 However, I am also aware that there are
3	BY MR. DUERK:		3 approximately 2,500 e-mails that counsel for the
4	Q	Ms. Hillmann, it has appeared to me that during your deposition where you have needed clarification in some of my questions rather than just guessing at my meaning you have asked for that clarification in order to provide clearer answers.	4 CARD clinic received yesterday that I have not
10		Has that been your impression as well?	5 received. I don't know what the topic of those
11	A	Yes.	6 e-mails is.
12	Q	I thank you for your time today. I don't have any more questions at this moment. I am sure I will have some follow-up questions after Mr. Bechtold begins.	7 I don't know what they are about, who
16	A	Okay.	8 authored them, what the nature of those e-mails
17		MR. DUERK: For just a moment though, I would like to make a record. I don't know if I need to do it on video or not. I guess we can redact it in this way.	9 are. In essence, I'm surprised.
21		I'd just like to note that in terms of the exhibits related to the e-mails today, Exhibits 138 and 139, this is the first time that I have seen these e-mails and any attachments.	10 I believe that I have had discovery
22			11 pending now for several years with an obligation
23			12 to replenish discovery related to any and all
24			13 communications between CARD and the Social
25			14 Security Administration, those discovery
			15 requests having been propounded on CARD.
16			16 I would like to note that for the record
17			17 that this is a surprise. I have done as best I
18			18 could, given the circumstances, and I am content
19			19 with the record that I have developed. However,
20			20 I am not in favor of being surprised with any
21			21 new correspondence or any other new discovery at
22			22 this trial preservation deposition for
23			23 Ms. Hillmann.
24			24 And to that extent I will object to
25			25 non-disclosure to any exhibits or materials that

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1	I haven't seen before right now if Ms. Hillmann		1	A	Correct.
2	is asked to respond to those materials.		2	Q	And your responses today are the official position
3	I just wanted to perfect that objection		3		of the SSA, correct?
4	for the record. With that, I think this portion		4	A	Correct.
5	of the video, I would imagine, would be redacted		5	Q	So we are getting your testimony today for your
6	out, so I tender the witness.		6		convenience and capturing your testimony on video
7	MR. BECHTOLD: Well, let's just take a		7		to present to the jury at trial because the Social
8	break, and we'll do a switcheroo.		8		Security Administration has represented that you
9	MR. DUERK: Sounds good.		9		are not going to be available for trial, is that
10	THE VIDEOGRAPHER: The time is 2:46. We		10		right?
11	are off the record.		11	A	To my knowledge, yes.
12	(Break taken.)		12	Q	Earlier you testified that you had reviewed the
13	THE VIDEOGRAPHER: The time is 2:54. We		13		POMS HI 803.001 and 803.050, the e-mails, and
14	are back on the record.		14		those are the POMS dealing with the application of
15	EXAMINATION		15		the section of the act, section 1881A, correct?
16	BY MR. BECHTOLD:		16	A	Correct.
17	Q Ms. Hillmann, my name is Tim Bechtold, and I		17	Q	And they are the Social Security Administration's
18	represent the Center for Asbestos Related Disease		18		internal regulations regarding the application of
19	in this lawsuit.		19		the act?
20	And just to follow-up, so you have been		20		MR. KAKUK: Objection, scope. Go for
21	designated by the Social Security Administration		21		it.
22	as the person with knowledge to provide responses		22	A	They are our instructions for technicians to
23	on behalf of the SSA, is that right?		23		process these claims.
24	A Correct.		24	Q	All right. And I think as you testified, both
25	Q And so you speak on behalf of the SSA, correct?		25		Exhibit 75 and 76 have been superceded, correct?
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1	A I need to find 75 and 76. Okay. These are the		1	A	Yes, I did. I contacted headquarters, I contacted
2	different policies. Yes. Correct.		2		our regional commissioner, I contacted the
3	Q And so as of October of 2022, Exhibit 75 and		3		district manager in Kalispell, and I contacted my
4	Exhibit 76 are no longer valid, correct?		4		former counterpart that used to be the Medicare
5	MR. KAKUK: Objection, scope.		5		lead prior to 2018.
6	A They have been updated. That doesn't mean they		6	Q	Okay. And the people who were active in Libby for
7	are not valid.		7		the Social Security Administration in 2011, you
8	Q Okay. Excuse me. They have been superceded?		8		contacted them as well, correct?
9	A Superceded with the same policy. The only change		9	A	That is who that was. So that would be
10	is in pronouns.		10		Mary Lisa Lewandowski, that would be Kathy Suarez,
11	Q Okay. Ms. Hillmann, I am going to hand you		11		previously Suarez, now Will.
12	Exhibit 332.		12	Q	And I think you testified that you reviewed
13	A Okay.		13		e-mails between the Social Security Administration
14	Q Could you take a look at that document?		14		and CARD, is that right?
15	A It's this document that I haven't seen.		15	A	The e-mails from the spring 2023. There were no
16	MR. DUERK: Object, non-disclosure. Go		16		prior e-mails for me to review. The only e-mails
17	ahead.		17		prior to that were from headquarters to our
18	BY MR. BECHTOLD:		18		regional office on just the training and the
19	Q So as I understand it, you have never seen		19		policies.
20	Exhibit 332 before?		20	Q	So I take it obviously the e-mail exists. You
21	A I have not. It was a part of your attached		21		just didn't look at it, is that right?
22	e-mail, but I was never sent this attachment.		22	A	This e-mail? I was never given this e-mail.
23	Q And as part of your preparation for your		23	Q	Why weren't you given that e-mail?
24	deposition today did you contact any of the people		24	A	I was not even made aware of this e-mail.
25	who work for the Social Security Administration?		25	Q	Did you ask Mary Lisa Lewandowski about the

		Page 113	Page 114
1	contact she had with CARD while she was in Libby?	1	Exhibit 332. Can you tell me what that is?
2	A I asked for all correspondence.	2	This is the environmental health hazards checklist, the EHH checklist.
3	Q Who did you ask for all correspondence from?	3	
4	A All the people that I previously just gave to you in my last question.	4	Is this the EHH checklist that has been in use since May 20th of 2010 until the present?
5		5	
6	Q All right. So you did ask Mary Lisa Lewandowski for all correspondence she had with CARD, and she did not provide it to you, is that right?	6	I would have to look at the actual policy. There has been policy changes in HI 00803.50 and the most recent one was done in October.
7		7	
8		8	
9	A Well, I would not know if she just forgot about this e-mail or didn't have this e-mail anymore because our records, our e-mail records actually drop off after seven years, so they are no longer available, so she might not have kept it.	9	Sure. Take a look at it.
10		10	Okay.
11		11	That's at page 2 of Exhibit 141.
12		12	I got it. What was the date on this one?
13		13	The e-mail date is May 20th of 2010.
14	Q Okay. Could you take a look at Exhibit 332?	14	Okay. It appears to be the same checklist.
15	A Uh-huh.	15	And if you look at Exhibit Number 75.
16		16	Is that in tab 4?
17	MR. KAKUK: Mr. Bechtold, is this somewhere in the record for me to look at as well?	17	Excuse me. Exhibit 73, and look at page 4.
18		18	Exhibit 73? Can you tell me what tab that is?
19	MR. BECHTOLD: Sure. It's Exhibit 332.	19	It's tab 3.
20	MR. KAKUK: In the trial exhibits?	20	Okay. Do you want me to check the checklist with that one too? It appears to be the same one.
21	Okay.	21	
22	Q So your testimony is you have never seen this before?	22	So from the e-mail that Mary Lisa Lewandowski sent to Tanis Hernandez on May 20th, 2010 with that environmental health hazards checklist attached to it, it's the same version of the environmental
23		23	
24	A No.	24	
25	Q Okay. Would you look to the second page of	25	
		Page 115	Page 116
1	health hazards checklist as Exhibit 76 and Exhibit 141, correct?	1	Administration developed this EHH checklist, correct?
2		2	
3	A It appears to be that way. It does look like there is one change.	3	MR. KAKUK: Objection, scope. Go for it.
4		4	
5	Q What is the change?	5	I believe so. I mean, I can't -- you know, to be honest, I know that CARD originally had the FLAME, I believe it was the FLAME and the LAMP2 benefits, and they had a questionnaire and that -- you know, essentially they used that questionnaire, but then we moved from the Affordable Care Act to the section 1881A act. I believe social security put this together to make sure that the physicians were following the guidelines of section 1881A of the act.
6	A I've just got to make sure. The actual minimum medical evidence required under malignancy of the lung. It just added the bronchoscopy report.	6	
7		7	
8		8	
9	Q Which version are you looking at?	9	
10	A I am looking at this version, and I am also looking at this version. So from this version to this version. In this version it's different.	10	
11		11	
12		12	
13	Q Okay.	13	
14	A It added on the bronchoscopy report.	14	
15	Q So instead of saying "this" let's identify them by number.	15	So as I understand your testimony, the Social Security Administration put together the language of this EHH checklist to make sure that the physicians involved in step 2 were following the provisions of section 1881A of the act?
16		16	
17	A Okay.	17	
18	Q The document you are referring to now is?	18	
19	A Exhibit 332.	19	
20	Q Okay. And 332?	20	Correct.
21	A 332.	21	MR. KAKUK: The same objection.
22	Q Then the next document that you looked at would be Exhibit 76. So 332 is different from 76?	22	Correct.
23		23	And your testimony is the reason they included this language is to have it mirror the act, correct?
24	A And 332 is different than Exhibit 141.	24	
25	Q Okay. Great. So the Social Security	25	

Page 117		Page 118
1	MR. KAKUK: The same objection.	1 Exhibit 75 or Exhibit 76 to CARD?
2 A	Did I say that previously? I guess I said that in	2 A To my knowledge, well, Exhibit 332 clearly shows
3	my deposition.	3 Mary Lisa must have given it to them.
4 Q	Your declaration?	4 Q It looks like that's just the EHH checklist, correct?
5 A	Declaration, yes.	5
6 Q	Okay. So that's what you testified in your declaration?	6 A That's what you're referring to, not the actual policy, or are you talking about the actual policy?
7		7
8 A	Yes.	8
9 Q	So did any Social Security Administration employee provide any guidance at all to any CARD employee on how to fill out an EHH checklist?	9 Q I am talking about the policy.
10		10 A Well, I don't know why we would give them the policy. It's our instructions. It's our internal instructions.
11		11
12 A	No. That is outside the realm of our job. We are not medical experts.	12
13		13 Q Okay.
14 Q	How many EHH checklists have come to the Social Security Administration that were not from CARD?	14 A Yeah.
15		15 Q So those instructions are meant for the Social Security Administration only, correct?
16 A	I would not know that off the top of my head. I would have to -- that would take some time to research, but there are outside physicians that do fill these out besides the CARD clinic.	16 A Those instructions are meant for our technicians only to process claims.
17		17
18		18
19		19 Q They're not meant for CARD?
20 Q	Would you agree that the CARD clinic does the vast majority of them?	20 A No, they're not.
21		21 Q They are not meant for anyone outside of Social Security Administration?
22 A	To to my knowledge, they do, but again I would have to research that to get the numbers, and that would take some time.	22 A They can access it on our policy -- you know, policy publications on the SSA.gov website, but I
23		23
24		24 mean I don't know why they would. It's our
25 Q	Did the Social Security Administration ever give	25
Page 119		Page 120
1	technician instructions.	1 A I'm sure they came in and I'm sure they called, but additionally we were just really setting up shop to teach our technicians this policy and train them correctly.
2 Q	Sure. And so the SSA sent staff to Libby after the Affordable Care Act was passed, right?	2
3		3
4 A	Correct.	4
5 Q	And they set up shop in Libby?	5 Q Okay. And who were the technicians there?
6 A	Set up shop? They trained our technicians within the Kalispell office, yes.	6 A The technicians at the time, I really would not know that unless I reached out to Terra. I believe Sonya Hymas might have been one of those technicians, but to be honest with you that is back in 2010-2011. You know, I would have to check.
7		7
8 Q	And so what did they do in Libby?	8
9 A	They took claims and they trained our SSA employees in the Kalispell office.	9
10		10
11 Q	When you say took claims, what does that mean?	11
12 A	That means they took in Medicare claims.	12 Q Did you ask Terra about who these people were?
13 Q	What did they do?	13 A I just asked Terra if anything was followed outside of policy. I didn't need to get the specific technician's names. There was no reason for it with the deposition.
14 A	They processed Medicare claims, so they followed the instructions within the policy and processed any Medicare claims that they had at the time.	14
15		15
16		16
17 Q	So as a practical matter, they sat down in a chair and did what?	17 Q Isn't one of the questions that you were asked to answer is whether or not CARD people have been trained by any SSA staff in Libby?
18		18
19 A	They followed these instructions, so they would follow -- if you go to HI 00803.50 they are following the step-by-step instructions to make sure that they could process this claim correctly.	19 A Correct, and the district manager relayed to me that they have not been.
20		20
21		21
22		22 Q But you didn't bother to check with anyone who was actually in Libby and making those communications with CARD, did you?
23 Q	Okay. So did people from Libby walk into their office and sit down and say, hi, my name is patient one?	23
24		24
25		25
		MR. DUERK: Objection, form. Go ahead.

		Page 121	Page 122		
1	A	She would have reached out to her employees, because I had a number of questions for her and I asked her to check with her technicians that were there at the time.	1	qualifies for Medicare benefits?	
2			2	A	Whatever physician completes that form should be following that section 1881A of the act, so that's all I can speak to on that.
3			3		
4			4		
5	Q	But you don't know who those technicians were?	5	Q	Okay. But is it CARD who determine whether someone qualifies for Medicare benefits?
6	A	Uh-huh.	6		
7	Q	So it's your testimony that Mary Lisa Lewandowski for example never -- who was in Libby, right?	7	A	Well, CARD isn't the only physicians that complete that checklist, so it's kind of like a vague question to me.
8			8		
9	A	She was in Libby.	9		
10	Q	And it's your testimony that she never communicated with CARD staff about how to fill out an EHH form?	10	Q	Okay. Does the Social Security Administration determine who qualifies for Medicare benefits?
11			11		
12			12	A	The Social Security Administration --
13	A	Correct.	13		MR. KAKUK: Object to the scope. Sorry.
14	Q	And she never communicated with any CARD staff about who determines whether an individual qualifies for Medicare benefits, correct?	14	A	-- follows HI 00803.050. We do not make the medical determinations. We rely on the physicians to complete the EHH checklist according to section 1881A of the act. We have nothing to do with the actual medical requirements and medical review.
15			15		
16			16		
17		MR. DUERK: Objection, vague, use of the term "communicated."	17		
18			18		
19	A	Can you repeat that question? I'm sorry.	19	Q	And is that physician the one who makes the final call on whether someone gets Medicare benefits?
20	Q	So no one from SSA in Libby communicated in any way with CARD staff about who determines who qualifies for Medicare benefits?	20		MR. KAKUK: The same objection.
21			21		
22			22	A	The physician that signs the form is basically attesting to the information that he completed within the form, so if he is stating that this person is diagnosed, you know, and continues to
23	A	Correct. That's outside the realm of our position.	23		
24			24		
25	Q	Does CARD determine whether an individual	25		
		Page 123	Page 124		
1		put a date of diagnosis, he completes step 3, he prints his name, he puts his signature and his date, then we are assuming that he followed section 1881A of the act and that he agrees that this person is diagnosed with that condition.	1	A	Correct.
2			2	Q	And it's not your job to second-guess them, correct?
3			3		
4			4	A	Absolutely. We are not medical experts.
5			5	Q	Okay. And part of the -- it's the medical provider's job to make a determination whether the minimum medical evidence required is provided, correct?
6	Q	Right. And I think you testified that it's outside of SSA's scope?	6		MR. KAKUK: Objection, scope.
7			7		MR. DUERK: Objection, form. Go ahead.
8	A	Absolutely. We are not medical experts.	8		
9	Q	Right. And you would defer to the medical experts to make that call, correct?	9		
10			10		
11	A	Correct.	11	A	Correct.
12	Q	I am going to draw your attention to again Exhibit 76, page 4, draw your attention to where it says step 2.	12		BY MR. BECHTOLD:
13			13	Q	I think you testified that you first heard about that CARD was providing -- CARD physicians were providing the minimum medical evidence required for step 2 as solely a B reader interpretation as qualifying a person for Medicare in March of 2023, is that right?
14			14		
15		Do you see that?	15		
16	A	Uh-huh.	16		
17	Q	And I think your testimony is that the Social Security Administration has no input on step 2, correct?	17		
18			18		
19			19		
20	A	That is correct. That would be filled out by the provider or the physician.	20	A	MR. DUERK: Objection, form. Go ahead.
21			21		I think what I testified to is that I was informed that CARD was sending our Kalispell district
22	Q	And I think you testified too that if -- that what you're assuming is that the physicians who are following -- who are filling out step 2 are following section 1881A of the act, correct?	22		manager an e-mail stating that they were completing this form even though they didn't agree that the person was diagnosed with that condition, and based on that statement I instructed the
23			23		
24			24		
25			25		

Page 125			Page 126		
1	Kalispell manager to, you know, make sure those		1	A	Uh-huh.
2	claims were denied, because that's not following		2	Q	And then the <u>minimum</u> medical evidence required.
3	section 1881A of the act and that is not something		3		Do you see that?
4	that we can process, and I think I mentioned		4	A	Uh-huh.
5	previously that we had an emergency message		5	Q	Do you see where it says, "Interpretation by a
6	10042REV that instructs our field offices in that		6		B reader qualified physician of a plain chest
7	same direction.		7		x-ray."
8	Q	And I think you have testified too that it is not	8		Do you see that?
9	your call whether to make that determination in		9	A	Uh-huh.
10	step 2. It's the medical provider's call, isn't		10	Q	Is that what it said?
11	it?		11	A	Yes.
12	MR. DUERK: Objection, form. Go ahead.		12	Q	So would you agree that interpretation by a
13	A	It is the medical provider's call to complete the	13		B reader qualified physician of a plain chest
14	form, but we are assuming they are following		14		x-ray is the sufficient <u>minimum</u> medical evidence
15	section 1881A of the act, and if they are telling		15		required for a diagnosis for purposes of the
16	us that they don't find that person diagnosed with		16		environmental health hazard checklist?
17	that condition to me and they complete the form,		17		MR. DUERK: Objection, foundation.
18	that looks like fraud.		18	A	Sir, I can't speak on this form, because I am not
19	Q	Okay. May I ask you in step 2 where it says check	19		a medical expert. All I know is if they are
20	the box next to the diagnosed impairments and		20		completing this form, they should be completing it
21	print the date of the diagnosis, do you see that?		21		following the section 1881A of the act.
22	A	Yeah, I do.	22	BY MR. BECHTOLD:	
23	Q	Now let's look at where it says "asbestosis."	23	Q	Okay. May I continue?
24	A	Uh-huh.	24	A	Uh-huh.
25	Q	Impairment, asbestosis, diagnosis code 5010.	25	Q	Or, underlined, "Interpretation of computed
Page 127			Page 128		
1	tomographic radiograph of the chest by a qualified		1		following section 1881A of the act and they
2	physician."		2		disagree with the diagnosis, but they're
3	The same question, does this satisfy the		3		completing this form.
4	minimum medical evidence required for a diagnosis		4	Q	So if two physicians disagree on a diagnosis --
5	for purposes of the environmental health hazards		5	A	The signing physician is the one giving the
6	checklist?		6		diagnosis, so if the signing physician states that
7	MR. DUERK: Objection, form, foundation.		7		this person is not diagnosed with this condition,
8	Go ahead.		8		we are going to deny the claim, period.
9	A	Again, this is outside of my purview, and if the	9	Q	Okay.
10	physician is following section 1881A of the act		10	A	Yeah.
11	and he completes this form following that, then I		11	Q	So if the signing physician says based upon
12	would assume that he has found them diagnosed with		12		section 1881A there are two ways to qualify for an
13	this condition.		13		environmental health hazards checklist, correct?
14	Q	Okay. So if a physician determined that someone	14		MR. KAKUK: Objection, scope.
15	had -- if a qualified physician determined		15	A	Again, I don't get into section 1881A of the act
16	based upon interpretation of a computed		16		because that is outside of my purview.
17	tomographic radiograph of the chest by a qualified		17		What I have simply said here is if he
18	physician and a different physician disagreed with		18		disagrees with the diagnosis, he or she or they,
19	that diagnosis or that interpretation is that a		19		and they complete this form and they're stating
20	violation of section 1881A?		20		they disagree that this person is diagnosed with
21	MR. KAKUK: Objection, scope.		21		this condition, we are going to deny them. And to
22	A	Again, that is outside of my purview.	22		me, it does look like fraud because they are
23	Q	You just told me that you thought it was	23		stating this person is diagnosed with this
24	fraudulent.		24		condition even though they signed off and they
25	A	I think it's fraudulent when they are not	25		don't believe that that person has that condition.

		Page 129	Page 130
1	Q	So you are stepping in now the interpretation of -- stepping in to the determination by the medical provider, is that right?	1 am saying, because what I am saying is if a physician completes this form and they're stating that they feel this person is diagnosed with this condition, gives a diagnosis date, completes 2, you know, and section 3, prints their name, physician signature and date, but then they say, "But I don't think they are diagnosed with that condition."
2	A	I am not stepping into the interpretation. I am stating if they are telling us that they don't believe this person has been diagnosed with this condition and they completed the form, we will deny it. We don't get into section 1881A. That is simply up to the physician.	2 Big red flag. No, it's not going to go through. We are going to deny it. Why would you complete a form stating that you feel this person is diagnosed, and then you are verbally telling me or within an e-mail that you don't feel they are diagnosed, that's contradictive and that doesn't align with section 1881A of the act.
3	Q	So if the physician is following section 1881A, it doesn't matter what you think about his diagnosis, correct?	3 Q So now that's your interpretation of section 1881A of the act, correct?
4		MR. DUERK: Objection, form.	4 It doesn't even need to be an interpretation. If somebody is telling me they clearly filled out a form that they don't agree with the diagnosis but they signed off on it, doesn't that look to you like fraud?
5		MR. KAKUK: And scope.	5 If I am completing this form and I am saying this person is diagnosed, but guess what, they are not really diagnosed, that does not make
6	A	I don't believe that's what I said at all. If they brought it to our attention that they don't feel this person is diagnosed with this condition but they completed the form, we will deny the claim, bottom line. It's not up to social security to determine this medical portion of the policy.	6
7	Q	So you just said both things. You said it's not up to you determine the medical portion, but you would determine the medical portion?	7
8	A	Sir, I think you are kind of misconstruing what I	8
9		sense for our technicians to process that.	9
10		And we have put it out in an emergency message. If it is conveyed to us that they are not truly diagnosed with this condition or let's say they even just marked one of these but they don't put the date of diagnosis, we are going to deny it based on the policy that we gave them in emergency message 10042REV, and that has been since the beginning in 2010.	10 This typically would not come with this because this is all we require.
11	Q	How many filled out EHH checklists have you seen?	11 Q And if you look at page 2 of Exhibit 516, do you notice any handwriting in there?
12	A	I honestly can't speak to that. I mean, I have seen 15 to 20, but I mean that was just within getting, you know, just example cases so we could rewrite some language within different policies. We had to take out a lead section of a policy. It wasn't like I was reviewing them.	12 It says "outside read only." But it's also missing the name, social security number and date of birth of the person.
13	Q	I am going to hand you what has been marked Exhibit 516.	13 Q Yeah. They've been redacted.
14	A	Okay.	14 A Okay. So I can't verify if this is a true, completed claim.
15	Q	You've never seen that before, have you?	15 Q No, I am not asking you to verify. I'm just asking you to look at it.
16	A	No.	16 A Okay.
17	Q	Take a look at the second page.	17 Q Have you seen an EHH form that has similar indications on it?
18	A	Okay.	18 A No.
19	Q	Do you recognize what that is?	19 Q And how many EHH forms have been turned in by CARD?
20	A	Yes. That's the environmental health checklist.	20 A I would have no idea off the top of my head. That would take some time to research. You are talking about going all the way back to like 2010.
21			21 Q Yeah. A lot?
22			22 A Yeah. Well, not just CARD. I mean, again, you know, other physicians fill these forms out as well.
23			23 A
24			24
25			25

		Page 133	Page 134
1	Q	Sure.	1 Q So as far as you know CARD has never outside of
2	A	Yeah.	2 this one form that you see in front of you ever
3	Q	Would it surprise you that there are -- since the	3 indicated on those EHH forms that the basis for
4		beginning of 2011 CARD has indicated when the	4 their qualification, their finding of
5		qualification for Medicare based upon their	5 qualification for Medicare benefits was based upon
6		determination by an outside B reader only has	6 solely an outside B read?
7		always been demarcated on the EHH form?	7 A As far as I know, I have never seen anyone like
8		MR. KAKUK: Objection to relevance and	8 this, and I haven't asked Terra about this because
9		scope.	9 this the first time I am seeing one.
10		MR. DUERK: And foundation. Go ahead.	10 Q Okay. I am going to hand you what has been marked
11	A	I am not understanding your question exactly.	11 as Exhibit 85. Take a look at that.
12		Are you indicating like they write	12 A Okay. Okay.
13		different comments within there, the checklist?	13 Q Go ahead and look through all the pages.
14	Q	Right.	14 A Okay. So this is back and forth from
15	A	Would it surprise me to know that they have been	15 Sonya Peterson who was a claims technical expert
16		doing that? Yes, because I haven't seen a form	16 to Mary Karen Caraway which I am assuming is with
17		like that.	17 CARD, but it looks like she received a letter from
18	Q	Has Terra Whiteman ever seen a form like that?	18 one of the beneficiaries or claimants that she is
19		MR. DUERK: Objection to foundation.	19 now eligible for Medicare benefits regardless of
20	A	Again, this is my first time hearing it, so I	20 her age based on these findings.
21		wouldn't know.	21 One of the doctors did identify a small
22	Q	And that's not something you ever inquired of her,	22 abnormality on your chest x-ray. Nothing has
23		is it?	23 significant health indications nor is it
24	A	This is the first time I am hearing about it, so	24 considered a diagnosis of asbestos-related
25		no.	25 disease. And she is asking if there is a
		Page 135	Page 136
1		diagnosis.	1 a medical expert. I think bottom line she is just
2	Q	Right. And so what's the response?	2 looking for a diagnosis.
3	A	It sounds like she has a B read DX, which to me	3 Q Right. And CARD told her it was a B read
4		would be a diagnosis. I don't know. We are not	4 diagnosis, isn't that right?
5		medical experts, so I would assume that DX means	5 A They did tell her it's a B read diagnosis, but I
6		diagnosis. "I will look it up and get back to you	6 am assuming that she is assuming they completed
7		momentarily." And she just basically says,	7 the form correctly.
8		"Thanks. That one I couldn't track down."	8 MR. KAKUK: Can we go off the record for
9	Q	And after the B read DX --	9 a second and take a short break?
10	A	CW is a B read. It looks like I sent her EHH in	10 THE VIDEOGRAPHER: The time is 3:31. We
11		2015. I will resend today.	11 are off the record.
12		But to be honest here, I mean, Sonya is not	12 (Break taken.)
13		going to be in a position to know what a B read	13 THE VIDEOGRAPHER: The time is 3:38. We
14		is. She is asking if they are being diagnosed.	14 are back on the record.
15		That's the bottom line. We don't get into the B	15 BY MR. BECHTOLD:
16		reads. You know, CARD can go on and on about	16 Q Ms. Hillmann, I am going to draw your attention to
17		B reads. They are completing that form. We are	17 Exhibit 135.
18		assuming they are following that section of the	18 A Okay.
19		act, so I mean it's not Sonya's job to, you know,	19 Q And direct your attention to paragraph 25, and
20		ask her about B reads or anything. She is asking	20 paragraph 25 deals with the award that SSA
21		for a diagnosis.	21 presented to CARD, and I think your testimony is
22	Q	Right. And CARD is telling her it's a B read	22 you don't know why SSA presented this award to
23		diagnosis, right?	23 CARD, correct?
24	A	Yeah, but for her to be knowledgeable about	24 A Correct.
25		B reads? We don't train them on that. She's not	25 Q And did you ask Terra Whiteman why?

		Page 137	Page 138
1	A	I did not ask Terra Whiteman. I asked Mary Lisa Lewandowski, our regional commissioner, and I also asked headquarters. I was trying to locate any awards to get more additional information.	1 asbestos-related disease.
2		Headquarters didn't have any awards on record for monetary value or just exemplary service, but Mary Lisa Lewandowski said there could have been a regional-level award, but she didn't have any record of it.	2 Q Is it an award from SSA to CARD?
3			3 A It appears to be so.
4			4 Q I am going to show you a photo.
5			5 A Okay.
6			6 Q And I apologize. Can you tell me who is in that photo?
7			7
8			8 MR. DUERK: Objection. Can we see a picture? Is this an exhibit?
9			9 MR. BECHTOLD: Not yet. I didn't expect it to be.
10			10 MR. DUERK: Non-disclosure.
11	Q	Why didn't you ask Terra Whiteman?	11 Q Can you tell me who is in the photo?
12	A	Because she wouldn't have been the one to give out the award. It would have been the regional commissioner's office.	12 A The only person that I kind of recognize is Terra over here in the black, unless she has died her hair.
13			13 Q And could you tell us what's going on in this photo?
14			14 A It appears that there is an award there, but I can't see what the award is for, if it's this one or what.
15	Q	Do you know what Terra Whiteman looks like?	15 Q So you don't know which SSA employees went to Libby to present this award?
16	A	Yes, I do. I see her on Zoom.	16 A I didn't know that SSA employees went to Libby to present the award, because that's Terra Whiteman
17	Q	I am going to hand you Exhibit 336.	17
18		Can you take a look at that?	18
19	A	Okay.	19 A
20	Q	You have never seen that before, have you?	20
21	A	No.	21
22	Q	What is that?	22 Q
23	A	It says it's a Center for Asbestos Related Disease (CARD) for outstanding partnership with SSA and Medicare outreach to individuals with	23 A
24			24 A
25			25
		Page 139	Page 140
1		who is the Kalispell manager. I am saying that the award would have come from the regional commissioner's office. We don't give awards out locally like that. That would be something either from headquarters or regional level.	1 Q No, who were the technicians who were processing the Medicare claims.
2			2 A Oh, within the field office? No, I cannot name all of them offhand, but I can tell you Sonya Hymas was one of them.
3			3 Q Okay. So Sonya was one?
4			4 A Uh-huh.
5			5 Q Did you talk to Sonya Hymas about information required for this testimony today?
6	Q	So your testimony is that's not an SSA award?	6 A Sonya Hymas hasn't been employed by this agency for I think maybe over a year, not even over a year, less than a year.
7	A	I did not say that. That could very well be one. We just didn't find any records of it.	7 Q So the answer is no?
8			8 A No.
9	Q	Okay.	9 Q You didn't attempt to, did you?
10	A	Did you want your exhibit back?	10 A I would not contact her outside of social security. We don't have any kind of personal level like that.
11	Q	No.	11 Q Okay. What did you ask Terra Whiteman about regarding this deposition?
12	A	Okay.	12 A Anything within the subpoena that I was looking for, any of the documents that you were -- you know, that you have listed or if there was any training that I was unaware of that, you know, headquarters hasn't had or the regional level
13	Q	So not only -- you don't know why SSA gave this award, correct?	13 Q
14	A	Correct. This is my first time seeing it. But as I have said previously, Mary Lisa Lewandowski did say there could have potentially been a regional-level award for CARD, but she had no records of it.	14 Q
15			15 Q
16			16 A
17			17
18			18
19			19
20	Q	So as I review your testimony, it is you don't know who the technicians were who went to Libby in 2011, correct?	20 A
21	A	The technicians from social security?	21
22	Q	Yeah.	22
23	A	From the regional office? I did list them.	23
24			24
25			25

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1	office hadn't had where we gave some type of	1 correct?
2	training to CARD, and she stated no.	2 MR. DUERK: Objection, form. Go ahead.
3 Q	Okay. So as I understand your testimony, you did	3 A I said that, yes.
4	not systematically go through the items in this	4 Q And I think you testified that what's incorrect
5	subpoena, correct, with Terra Whiteman?	5 about this is that it's the Social Security
6	MR. DUERK: Objection, form. Go ahead.	6 Administration personnel who fill out step 1,
7 A	I took pieces out of each of those questions and	7 correct?
8	asked Terra about every single one of them.	8 A I said that they complete step 1, and then step 2
9 Q	Except the one about the award?	9 and step 3 are completed by CARD following section
10 A	No. I wouldn't ask her about the award because	10 1881A of the act.
11	that would not come from her office. That would	11 Q Who did you talk to to find out that SSA employees
12	be either regional level or headquarters.	12 fill out step 1?
13 Q	So I think you're contradicting yourself.	13 A That's in policy. It's HI 00803.050. It's been
14	MR. DUERK: Objection, counsel	14 in policy since the beginning.
15	testifying. Go ahead.	15 Q And does that mean it's what actually happens?
16 BY MR. BECHTOLD:		16 A Yes.
17 Q	Again, just to clarify this, you did not go	17 Q So it's your testimony that EHH checklists are
18	through each of these numbered requests in the	18 provided from SSA to CARD after step 1 is filled
19	subpoena with Terra Whiteman, correct?	19 out?
20 A	I did not go through the one regarding the award.	20 A To the best of my knowledge, this is how we are
21	That was the only one I did not go through.	21 supposed to be filing these claims, and this is
22 Q	Okay. I am going to draw your attention back to	22 how Terra Whiteman said that these claims are
23	paragraph 19, and I believe your testimony is that	23 being processed. She confirmed that.
24	regarding paragraph 19 that Social Security	24 Q Okay. So it's your testimony that Terra Whiteman
25	Administration plays no role in step 2, is that	25 told you that CARD employees do not fill out
Page 143		Page 144
1	step 1 of the EHH checklist, correct?	1 section 1881A of the act?
2 A	Correct.	2 A Correct. Yes.
3 Q	And is it Terra Whiteman's testimony that CARD's	3 Q And it's not your job to second-guess them?
4	employees do not fill out SSA-827, the medical	4 A Uh-huh.
5	release forms and send that to -- and have the	5 Q So regarding paragraph 26, so why does CARD fill
6	patients sign and send that to SSA?	6 out the EHH checklist?
7 A	Correct.	7 A Why do they fill out section 2 and 3? Is that
8 Q	And the only basis of your knowledge is what	8 what you're asking?
9	Terra Whiteman told you?	9 Q No. I just said the EHH checklist.
10 A	Correct. And she was the district manager during	10 A Because that's what they have to do when they are
11	that period of time, so she would know. She sees	11 following section 1881A of the act. We are not
12	these EHH checklists and she knows how her	12 medical experts. We don't diagnose patients with
13	technicians process these claims.	13 diseases. We are not doctors. We are not
14 Q	Okay. But you have no personal knowledge, right?	14 certified. We haven't gone to school for that.
15 A	I have no personal knowledge because I am not	15 We are simply claims technicians processing
16	within that office, but I am taking the district	16 claims.
17	manager's word at it from what she provided me.	17 Q So how do Social Security Administration employees
18 Q	Okay. And then that's your same testimony for	18 look for asbestos-related disease or conditions in
19	paragraph 19, paragraph 20, paragraph 21 and	19 step 2?
20	paragraph 22, correct, regarding step 1?	20 A How do we look for them? We look -- if you go to
21 A	I believe so. I believe it involved the same	21 the checklist, again, section 2, we are making
22	thing where we fill out step 1. Step 2 and step 3	22 sure that there is a listed impairment or two and
23	are completed by the physician following section	23 there is a date of diagnosis and step 3 is
24	1881A of the act.	24 completed, and then there is a printed name of a
25 Q	Right. And it's the physician's job to follow	25 physician with the physician's signature and date.

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1	We are assuming the physician followed that		1	Q	That's not SSA's job?
2	section of the act.		2	A	That is not SSA's job. We are not medical
3	Q <u>And what's the difference between a clinical</u>		3		experts.
4	<u>diagnosis and a diagnosis for purpose of the EHH</u>		4	Q	So it's not SSA's job to determine whether someone
5	<u>checklist?</u>		5		could be diagnosed by an interpretation of a
6	MR. KAKUK: Objection, scope.		6		computed tomographic radiograph of the chest by a
7	MR. DUERK: Foundation. Go ahead.		7		qualified physician, right?
8	A To be honest with you, that is not within policy		8	A	SSA's job is to make sure this form is completed,
9	and that's outside of the realm of my expertise.		9		and it is stating that this person is diagnosed
10	I couldn't answer that for you. I think that's		10		with one of these listed conditions with the date
11	more of a medical position, and I can't answer		11		of diagnosis and has been signed off by a
12	that.		12		physician that has been following section 1881A of
13	Q <u>Is it fair to say that SSA has no position?</u>		13		the act.
14	A I would say that we don't get involved with that.		14	Q	<u>I am going to draw your attention to Exhibit 123</u>
15	Q <u>Okay.</u>		15		<u>which is tab 7 in your book.</u>
16	A No.		16	A	Okay.
17	Q <u>And I think your testimony for paragraph 28 is</u>		17	Q	<u>Did the patient in Exhibit 123 have a diagnosis</u>
18	<u>again that's something where SSA doesn't get</u>		18		<u>under section 1881A of the act?</u>
19	<u>involved with, correct?</u>		19		MR. KAKUK: Objection, scope.
20	A Correct.		20	A	This is just a letter from CARD stating that -- I
21	Q <u>And I think for paragraph 29 you agreed that</u>		21		mean, this is the first time I am seeing this
22	<u>step 2 is completed by the healthcare provider who</u>		22		letter, and it's saying, "You participated in an
23	<u>will identify the asbestos-related conditions and</u>		23		asbestos health screening on 12-11-14, and at that
24	<u>the date of diagnosis, correct?</u>		24		time you were not diagnosed with an
25	A Correct.		25		asbestos-related disease."
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1	I don't believe they would be following		1	Q	<u>And you being the --</u>
2	section 1881A of the act. I can't speak on this		2	A	<u>Medicare lead.</u>
3	form and what they complete on the checklist. We		3	Q	<u>The medicare lead would not -- you would not be an</u>
4	are assuming they are following the guidelines of		4		<u>important person to inform about requests for</u>
5	section 1881A of the act.		5		<u>information for Medicare information?</u>
6	Q <u>So is it your job to interpret section 1881A of</u>		6	A	I believe they were trying to get information from
7	<u>the act or is it the physician's job to interpret?</u>		7		about 2010 to whenever. That would not be a time
8	A That is the physician's job. If he completes that		8		period I was a Medicare lead. I wouldn't be the
9	checklist and he states that they are diagnosed		9		appropriate party to obtain that information from.
10	with that condition, we are assuming he followed		10	Q	<u>And when did you become the Medicare lead?</u>
11	the guidelines, he or she or they followed the		11	A	2018.
12	guidelines of the act.		12	Q	<u>And it's the Social Security Administration's</u>
13	Q <u>Again, you defer to his determination, correct?</u>		13		<u>position that no information post 2018 was asked</u>
14	A Yes, we defer to their determination, yes.		14		<u>for?</u>
15	Q <u>So when were you first made aware of this lawsuit?</u>		15		MR. KAKUK: Objection, scope.
16	A I think when we got the subpoena. I can't be too		16	A	I would not know. I was not asked to supply any
17	sure. I don't remember.		17		documentation to my knowledge.
18	Q <u>Was it several years ago or was it last year or</u>		18	Q	<u>Has the Social Security Administration been aware</u>
19	<u>was it a couple months ago?</u>		19		<u>that CARD has filled out EHH forms for individuals</u>
20	A A couple months ago, this year.		20		<u>based only on outside reader interpretations since</u>
21	Q <u>So you were never made aware of any requests from</u>		21		<u>2010?</u>
22	<u>any of the parties for information in this case?</u>		22	A	The first knowledge that we had of them completing
23	A They wouldn't send those directly to me. They		23		an EHH checklist where they said that they -- they
24	would send those to the appropriate parties if		24		stated that the person -- the physician didn't
25	there was a disclosure request.		25		feel that person was diagnosed with that condition

		Page 149	Page 150
1	was in spring 2023. That is the first time that	1	received a positive outside read making him
2	we are hearing about this.	2	eligible for the EHH designation. It is always
3	Q I am going to hand you Exhibit 83.	3	difficult for me explaining to a patient that they
4	A Okay.	4	are not diagnosed, but then need to call you guys
5	Q Take a look at that.	5	to receive the benefits. In the future, should
6	A Do you want me to read it?	6	patients with positive outside reads just state
7	Q Do you recognize what that document is?	7	that they have positive outside read or just state
8	A That is an e-mail from a Kalispell employee,	8	they are diagnosed? Sorry about the confusion."
9	Sonya Peterson or Sonya Hymas who is a claims	9	
10	technical expert to one of the CARD center	10	And Sonya followed policy and stated, "If
11	employees, I am assuming, and she said if the	11	the claimant has been diagnosed with one of the
12	claimant has been diagnosed with one of the	12	impairments on that list, they qualify, so to us
13	impairments on that list, they qualify, so to us	13	either they are diagnosed or they are not.
14	either they are diagnosed or they are not.	14	So to us, either they are diagnosed or they
15	Q Okay. So let's start at the bottom where the	15	are not, and that is inside the scope of
16	e-mail train starts.	16	HI 00803.050. She is not going into specifics
17	A Okay.	17	about a B read or any of that, because that's not
18	Q And so describe what's happening in this e-mail.	18	her job.
19	A She contacted them, and she said this guy called	19	Q Right.
20	and said he has not been diagnosed with an	20	A Right.
21	asbestos-related condition, but said you told him	21	Q So it's CARD's job to make that determination?
22	to call us.	22	A Correct.
23	Q Okay. And that's Sonya's e-mail to CARD, correct?	23	Q All right. And it's SSA's job to defer to CARD?
24	A Correct. And then CARD wrote back.	24	A It's SSA's job to make sure that whoever is
25	"Hi Sonya. TT is not diagnosed, but has	25	completing that EHH checklist is following the
		Page 151	guidelines of section 1881A of the act. If this
	that.	1	is completed, we are assuming they are following
1	Q Correct. Does SSA have any opinion on what the	1	Page 152
2	difference between a clinical diagnosis of	2	Ms. Hillmann, as I understand your testimony, you
3	asbestosis, pleural thickening or pleural plaques	3	have no personal knowledge of communications
4	by a CARD physician?	4	between CARD staff and SSA staff at the Kalispell
5	MR. KAKUK: Objection, scope.	5	level, correct?
6	Q Compared to a positive interpretation of	6	I do have knowledge of the spring 2023
7	asbestosis, pleural thickening or pleural plaques	7	correspondence between the CARD staff and
8	on a CT by a qualified physician for purposes of	8	Terra Whiteman, but prior to that, no.
9	the EHH checklist?	9	Okay. And again you have no personal knowledge of
10	MR. DUERK: Sorry. Objection, form.	10	how CARD staff and SSA staff in Kalispell handled
11	MR. KAKUK: And scope.	11	EHH forms, correct?
12	A Again, that's outside of my purview, and I have to	12	I do know that our SSA staff follows that
13	say I don't have an opinion because I am not a	13	HI 00803.050 based on Terra Whiteman's response
14	medical expert.	14	who is the district manager.
15	Q Why don't we go off the record for a little bit.	15	Okay. And if it turns out that CARD staff are the
16	I am going to do a quick review, and then probably	16	one who actually are filling out step 1, does that
17	about five minutes.	17	make those EHH checklists invalid?
18	A Okay.	18	I wouldn't assume they would be invalid as long as
19	THE VIDEOGRAPHER: The time is 4:00. We	19	they are completing step 2 and step 3. It's just
20	are off the record.	20	that we should be following the proper
21	(Break taken.)	21	instructions within the policy where we initiate
22	THE VIDEOGRAPHER: The time is 4:07. We	22	that on our side.
23	are back on the record.	23	But it doesn't invalidate those EHH checklists?
24	BY MR. BECHTOLD:	24	Uh-uh.
25		25	MR. KAKUK: That was a no?
		A	That was a no.

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1 BY MR. BECHTOLD:		1 and is that Mary Lisa Lewandowski and
2 Q So I would like to draw your attention to		2 Terra Whiteman?
3 Exhibit 136 which is your declaration that you		3 A Correct.
4 submitted earlier in this case.		4 Q Anyone else?
5 A Okay.		5 A I also contacted a couple other technicians that
6 Q In paragraph 1 you state that you searched SSA's		6 went out there to provide the training. That
7 electronic records which included archived		7 would be Kelly Hansen. She is currently a
8 policies and information stored on the agency's		8 supervisor within our regional office, and also
9 drive?		9 Chris DiGiacomo was another technician that went
10 A Correct.		10 out there to provide training to the social
11 Q Did that include e-mail communications?		11 security technician, and he is also a manager as
12 A It would not necessarily mean e-mail		12 well.
13 communications. It's our T-drive where we store		13 Q Did you contact Nancy Berrihill at that time?
14 any type of Libby correspondence that Kathy kept,		14 A No, I did not.
15 the previous Medicare lead.		15 Q And she was in Libby at that time, correct?
16 Q So did it include e-mail correspondence or not?		16 A She did come for one -- I believe one training.
17 A There was e-mail correspondence between Kathy and		17 It might have been two.
18 then headquarter components about training our		18 Q And she still works for SSA, right?
19 field offices.		19 A Correct.
20 Q But as far as you know, there was no e-mail		20 Q How come you didn't talk to her?
21 communications between SSA staff and CARD staff?		21 A Because I went directly through our regional
22 A Correct.		22 commissioner who would have a little bit more
23 Q And then you stated you further consulted with		23 information, and if she needed to reach out to
24 current agency personnel who may have been		24 Nancy, she would.
25 involved in CARD's interaction during this period,		25 Q In paragraph three you state that in the 2010 to
Page 155		Page 156
1 2011 timeframe regional office personnel		1 correct?
2 interacted with employees from CARD because CARD		2 A Correct.
3 prepared the EHH Medicare claims for submission to		3 Q And SSA gave that document to CARD without any
4 SSA.		4 directions, correct?
5 What was the nature of the interaction?		5 A To my knowledge, yes. But CARD has been
6 A I believe they were just doing Medicare EHH		6 instructed to continue to follow the section 1881A
7 outreach, so they were outreaching to the		7 of the act.
8 community to find individuals affected, and I		8 Q Okay. Who instructed CARD to follow section 1881A
9 think that they might have like -- potentially the		9 of the act?
10 only contact that they had with them is about the		10 A I would not know. I mean, I am assuming that that
11 Medicare outreach, and if they had questions		11 was some type of correspondence at some time. I
12 about, you know, if they were missing forms or		12 don't know they would just complete a checklist
13 what have you regarding the claims process.		13 without knowing they have to follow the guidelines
14 Q So as I understand it, Medicare eligibility based		14 of the act. I am sure there is correspondence in
15 on the EHH checklists is something that the SSA		15 there somewhere.
16 technicians in Libby were processing at that time?		16 Q Okay. So you are sure that there is
17 MR. KAKUK: Objection, scope.		17 correspondence from SSA to CARD telling them to
18 A Yeah. Can you reread that question? I guess I		18 follow section 1881A of the act?
19 didn't understand it fully.		19 A Well, I don't know if it's directly from SSA. I
20 Q So the Medicare technicians -- excuse me. The SSA		20 mean, I am just assuming that it's probably
21 technicians were processing Medicare claims based		21 underneath their grant guidelines for them to
22 upon the EHH checklists in Libby?		22 perform, you know, those type of reviews within
23 A They were basing it following the instructions in		23 their clinic.
24 HI 00803.50.		24 Q Okay. So you don't know?
25 Q And the EHH checklist is a SSA created document,		25 A I don't know. I do know that they do get grants

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1	and they base them off of certain things, so I	1	A	Once they process it? Well, again, the
2	can't speak to that. That's outside of my	2		instructions in HI 00803.50 if they follow that
3	purview.	3		and the EHH checklist is complete there is a
4	Q Okay. But as far as you know, there was never	4		diagnosis checked, there is a date of diagnosis,
5	anything from SSA to CARD telling them how to fill	5		section 3 is completed, printed name of the
6	out the EHH checklist?	6		physician, physician signature and date. We are
7	A Correct.	7		assuming that physician followed section 1881A of
8	Q And as far as you know, there was never any	8		the act, and we process the claim.
9	informal communication of any type between CARD	9	Q	So what does it mean to process the claim?
10	staff and SSA staff about how to fill out these	10	A	We allow them for EHH Medicare.
11	EHH checklists, correct?	11	Q	When you say allow, what does that mean?
12	A Correct.	12	A	We process an allowance to entitle them to
13	Q And you base that upon your communications with	13		Medicare under the environmental health hazards
14	Mary Lisa Lewandowski and Terra Whiteman?	14		provisions.
15	A Correct, and the headquarters components.	15	Q	So what do the SSA employees do to make that
16	Q What are the headquarters components again?	16		happen?
17	A The office of information security programs and	17	A	They take a claim within our system and they code
18	then the office of program support. I'm going to	18		it appropriately and then they process it, and it
19	mess -- It's OPSOS. It is office of program	19		sets up the record and it sends a Medicare card.
20	support. I can't think of the last two of that	20	Q	Okay. So SSA processes it and inputs it into the
21	acronym, but those are two headquarters components	21		system and the system -- they have been approved
22	that have trained and actually initiated this	22		and the system then gives them Medicare benefits?
23	policy when it originally came out.	23	A	Correct.
24	Q So once the SSA employees process an environmental	24	Q	Okay. I have nothing further. Thank you.
25	health hazards checklist, what happens next?	25	A	Uh-huh.
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1	Q Oh, I do have something further. I want to hand	1	Q	Okay. Regardless of whether you can point to any
2	you what was an attachment to Exhibit 139.	2		communication between SSA and CARD today on that
3	A Okay.	3		topic, based on what information you have reviewed
4	Q Have you seen this document before?	4		in your factual inquiry, are resources readily
5	A I have not.	5		available to the public about how to fill out EHH
6	Q If you look at Exhibit 139, you see on page 1 of	6		checklists in terms of the POMS, section 1881A of
7	139 at the bottom where there is an e-mail from	7		the Affordable Care Act itself, and the emergency
8	Tracy McNew to Terra Whiteman.	8		policy 10042REV that you referenced earlier?
9	A Uh-huh. I received this e-mail, but I did not	9	A	Those are public-facing policies. That means the
10	receive this attachment, so this is the first time	10		public can obtain those, yes.
11	I am seeing it.	11	Q	And did each of those sources of information that
12	Q Okay. So your testimony is that Terra Whiteman	12		are publicly-available provide clear direction in
13	forwarded you the e-mail but did not forward you	13		terms of the requirements of a CARD patient or any
14	the attachment to the e-mail?	14		patient in order to obtain Medicare benefits?
15	A Correct.	15		MR. KAKUK: Objection, scope.
16	Q Okay. That's all the questions.	16		MR. BECHTOLD: Form.
17	EXAMINATION	17	A	Yes, for EHH Medicare, yes. Correct.
18	BY MR. DUERK:	18	Q	And are you aware of that just based on your own
19	Q I have just a few follow-ups.	19		personal knowledge having seen those documents?
20	A Okay.	20	A	Uh-huh.
21	Q Mr. Bechtold asked you whether or not CARD had	21	Q	Is that a yes?
22	been informed by SSA about how to fill out EHH	22	A	That's a yes.
23	checklists.	23	Q	Okay. Now, Ms. Hillmann, you may or may not be
24	Do you remember that question?	24		aware of this, but are you aware that even CARD's
25	A Yes.	25		website itself says you need a diagnosis of

		Page 161	Page 162
1	asbestos-related disease in order to get Medicare?		
2	A No, I was not aware of that.	1	any training as well.
3	Q All right. In terms of questions that	2	Q In terms of all of the interviews conducted and
4	Mr. Bechtold asked you about any type of training	3	all of the written material you received, did
5	that might have been provided or wasn't provided	4	every source of information point to the same
6	to CARD from any of these different SSA employees,	5	response that SSA did not train CARD how to fill
7	I believe Mary Lisa Lewandowski is somebody that	6	out these EHH forms at the CARD clinic at any
8	you spoke to about this issue of training, is that	7	time?
9	right?	8	A Correct.
10	A Correct.	9	Q Okay. Now, I want to entertain a hypothetical
11	Q Did you speak with Terra Whiteman or Whiteman	10	here. The hypothetical that I want to entertain
12	about the issue of training also?	11	is if somehow someone like Sonya Hymas,
13	A Yes.	12	Sonya Peterson, if an SSA field office employee
14	Q There was some other names that you mentioned	13	had provided training to CARD about how to fill
15	among SSA staff related to this topic of CARD and	14	out an EHH form, if that had occurred, would that
16	whether or not any SSA training occurred.	15	training have been based on what those SSA field
17	Do you remember any of the other names of	16	agents had been instructed according to the POMS?
18	individuals?	17	A I can't speak to the -- I don't know what they
19	A The regional office employees that train the SSA	18	would train them on. Honestly, they would just
20	staff in Kalispell, that would be Kelly Hansen.	19	train them on this section has to be completed,
21	Q Okay.	20	this section has to be completed, because we are
22	A And then Chris DiGiacomo, and I believe I said	21	not medical experts, so I don't believe training
23	Nancy Berrihill as well. I did speak with	22	would be beneficial for CARD, because we are not
24	Kelly Hansen and I did speak with Chris DiGiacomo,	23	medical experts and we can't speak to the section
25	and they also verified that they never gave CARD	24	1881A of the act because we're not trained on it.
		25	Q All right.
		Page 163	Page 164
1	A Yeah.	1	A Yes.
2	Q And in terms of where those field employees would	2	Q Okay. Mr. Bechtold asked you if you had any
3	have gotten information about how to fill out an	3	personal knowledge of the communication between
4	EHH form, is it fair to assume that would have	4	CARD and SSA. I believe you said you didn't have
5	been from the POMS?	5	any personal knowledge of that communication, but
6	A It would have been directly from POMS.	6	during your factual inquiry related to that topic
7	Q Right.	7	did you review a certain amount of communication
8	A Yeah.	8	between CARD and the Social Security
9	Q Nothing in the POMS mentions that patients are	9	Administration?
10	eligible for Medicare on a B read alone, correct?	10	A I can only speak to what I received in the spring.
11	MR. KAKUK: Objection, scope.	11	That's the only correspondence that I have seen
12	MR. BECHTOLD: Form.	12	between social security and CARD.
13	A Correct.	13	Q Okay.
14	BY MR. DUERK:	14	A Yeah.
15	Q All right. Nothing in the POMS, none of the	15	Q And in terms of any discussions with any of the
16	language in the POMS that you have read states	16	members of the Social Security Administration that
17	that it's acceptable to submit a patient for	17	we have mentioned today, did you ask specific
18	Medicare without a diagnosis of asbestos-related	18	questions of them about whether there was any
19	disease, correct?	19	communication they were aware of between CARD and
20	MR. KAKUK: The same objection.	20	the SSA related to the issues of training or
21	MR. BECHTOLD: Form.	21	notice or any of these other issues that we have
22	A Correct.	22	discussed today?
23	BY MR. DUERK:	23	A I did reach out to Terra Whiteman on the majority
24	Q And I am basing that on language you yourself have	24	of the questions except for the one about the
25	read in the POMS, fair?	25	award, and then I did ask Kelly Hansen and

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1	Chris DiGiacomo if -- again, I am just going to reiterate what I said in my previous statement.	1	THE VIDEOGRAPHER: The time is 4:27. We are off the record.
2	Did we give any additional, do you know if we gave	2	(Break taken.)
3	any additional training to the CARD employees, and	3	THE VIDEOGRAPHER: The time is 4:30. We
4	they all stated that we hadn't to their knowledge.	4	are back on the record.
5		5	
6 Q	And Terra Whiteman was based in -- where is	6	BY MR. DUERK:
7	Terra Whiteman based now?	7 Q	All right. After a short break, Ms. Hillmann, do
8 A	Kalispell.	8	you have Exhibit 85 in front of you?
9 Q	And how long has Terra Whiteman been based in	9 A	I do.
10	Kalispell?	10 Q	Mr. Bechtold referenced this e-mail during your
11 A	Oh, goodness. I would say -- I would have to actually ask her, but she has been there for quite	11	cross-examination. This is about a patient with
12	some time.	12	some questions from SSA as to whether or not the
13		13	patient has been diagnosed.
14 Q	Okay.	14	Is that a fair representation?
15 A	Yeah. Most of her tenure has been in that office.	15 A	Yes.
16 Q	Mr. Bechtold had you look at two exhibits,	16 Q	Okay. On page 2 does the e-mail from CARD
17	Exhibit 85, an e-mail between Sonya and Mary Karen	17	indicate that this patient has a B read diagnosis?
18	Caraway.	18 A	To me, I would read it that way, but I am not a
19	Do you have that in front of you?	19	medical expert. I would assume DX means
20 A	If I can find it. Let me see. Give me one	20	diagnosis.
21	second.	21 Q	Okay.
22 Q	Why don't we take a five-minute break and we will	22 A	Yeah.
23	organize the documents and then get back on the	23 Q	And so if that interpretation is correct, is CARD
24	record.	24	saying this patient has a B read diagnosis, but I
25 A	Okay.	25	need to check on some other information?
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1 A	Correct.	1 A	Yes. If it's one of the ones listed within the
2 Q	Okay. So if the CARD clinic represents to the	2	checklist and they complete that checklist
3	Social Security Administration that a patient has	3	following section 1881A of the act, yes.
4	a diagnosis, in SSA's view that patient is	4 Q	All right. So in terms of Exhibit 83 that
5	Medicare eligible, fair?	5	Mr. Bechtold showed you, an e-mail from Sonya --
6 A	If the CARD clinic presents us with that checklist	6	between Sonya Peterson and Stephanie Moore,
7	with one of the diagnoses that are listed with the	7	Ms. Peterson says, "If a claimant has been
8	date of diagnosis and completes 2 and 3, then yes.	8	diagnosed with one of the impairments on that
9 Q	All right.	9	list, they qualify, so to us, either they are
10 A	Yeah.	10	diagnosed or they aren't."
11 Q	Nowhere in this e-mail train does it say that this	11	Did I read that correctly?
12	patient does not have a diagnosis, correct, except	12 A	Correct.
13	in the first e-mail that kicks this all off?	13 Q	And so basically, Ms. Hillmann, if a patient has
14	The subsequent pages don't say anywhere	14	been diagnosed they are eligible for Medicare, and
15	affirmatively this patient is not sick, fair?	15	if they have not been diagnosed, they aren't
16 A	To the best of my knowledge, yes.	16	eligible for Medicare?
17 Q	Okay. Nowhere in this e-mail does CARD tell the	17	MR. KAKUK: Objection, scope.
18	SSA that they are submitting patients for Medicare	18 A	Correct.
19	benefits without a diagnosis as a routine	19	BY MR. DUERK:
20	practice, correct?	20 Q	Okay. Is that a fair interpretation in your mind?
21 A	Correct.	21 A	Yes.
22 Q	Okay. In terms of policy, if a patient has been	22 Q	Ms. Hillmann, I have no further questions, and I
23	diagnosed by CARD with one of the impairments of	23	appreciate your time here today. Thank you.
24	asbestos-related disease due to asbestos exposure,	24 A	Thank you.
25	they qualify for Medicare?	25	MR. BECHTOLD: I am going to do a brief

Page 169		Page 170	
1	re-cross.	1	THE COURT REPORTER: In this answer
2	MR. DUERK: I will object, but go ahead.	2	right now?
3	EXAMINATION	3	MR. BECHTOLD: No.
4	BY MR. BECHTOLD:	4	THE COURT REPORTER: Previous?
5	Q If the judge kicks it, he'll kick it.	5	MR. BECHTOLD: Previous.
6	So you testified that there is nothing in	6	THE COURT REPORTER: How far previous
7	the POMS that qualifies an individual for Medicare	7	and during whose examination?
8	eligibility based on a B reading alone, correct?	8	MR. BECHTOLD: During the beginning of
9	Do you remember that testimony you just	9	Mr. Duerk's examination.
10	gave?	10	MR. KAKUK: Of his cross, right, of his
11	A Did I just give that testimony?	11	re-direct?
12	MR. KAKUK: The same objection.	12	MR. BECHTOLD: Of his re-direct.
13	MR. DUERK: Objection, form. Misstates	13	MR. KAKUK: Yeah.
14	the testimony. Go ahead.	14	THE COURT REPORTER: Well, let me go to
15	A I think the testimony that I gave was what's in	15	it. One moment.
16	HI 00803.50 and it's our instruction to our	16	(Discussion off steno record.)
17	technicians. It states if that checklist is	17	(Testimony read back as follows:)
18	completed, you know, section 1, section 2,	18	Question: Nothing in the POMS mentions
19	section 3, we are assuming that the physician	19	that patients are eligible for Medicare on a
20	followed section 1881A of the act and provided an	20	B read alone, correct?
21	appropriate diagnosis based on their	21	Answer: Correct.
22	interpretation of that act.	22	A I agree with that.
23	MR. BECHTOLD: Annie, can you scroll	23	BY MR. BECHTOLD:
24	back for me to her testimony about nothing in	24	Q Okay. So nothing in POMS says that a person is
25	POMS?	25	eligible based on a B reading alone?
Page 171		Page 172	
1	A Correct.	1	(Read back.)
2	MR. KAKUK: Objection, scope.	2	A I meant his question. I'm sorry.
3	BY MR. BECHTOLD:	3	THE COURT REPORTER: Isn't that the
4	Q So would you agree that Exhibit 75, the POMS, and	4	question?
5	also Exhibit 142, right? 140?	5	A Was it the same question?
6	MR. DUERK: 75 and 140 are the same.	6	THE COURT REPORTER: That's the
7	BY MR. BECHTOLD:	7	question.
8	Q Yeah. 75 and 140 both indicate that an ARD	8	A Because that doesn't sound the same because you
9	diagnosis established by a diagnostic method	9	asked me --
10	specified in the law, so for example, if we looked	10	Q Go ahead. Finish the question.
11	on Exhibit 75 and the examples 1, 2 and 3 where	11	A I'm sorry.
12	they state Mr. Brown received an ARD diagnosis	12	THE COURT REPORTER: That's okay.
13	established by a diagnostic method specified in	13	(Read back.)
14	the law or Mr. James received an ARD diagnosis	14	MR. DUERK: The same objections.
15	established by a diagnostic method specified in	15	Again, I can't speak to that. That's outside of
16	the law or Ms. Jackson received an ARD diagnosis	16	my purview. I am not a medical expert that
17	established by a diagnostic method specified in	17	interprets section 1881A of the act.
18	the law, so is SSA's interpretation of section	18	I was asked if that language was within
19	1881A is that a B reading alone is not a	19	this policy section that's given to our
20	diagnostic diagnosis established by a diagnostic	20	technicians and I said -- he asked me you would
21	method as specified in the law?	21	say that this language was not within this policy,
22	MR. KAKUK: Objection, scope.	22	and I agreed and I said correct.
23	MR. DUERK: Objection, form, compound	23	Q Okay. So your testimony is that the specific
24	and foundation. Go ahead.	24	words "B reading alone" is not found in POMS?
25	A Can you read that back to me? I'm sorry.	25	A It's not found in policy, within this policy that

		Page 173	Page 174
1	he asked me about.	1	I, HEATHER HILLMANN, do hereby certify
2	Q And your testimony isn't meant to have any	2	that I have read the foregoing transcript and
3	implication about Medicare eligibility based upon	3	that the same and accompanying amendment sheets,
4	section 1881A?	4	if any, constitute a true and complete record of
5	MR. DUERK: Objection, form.	5	my testimony.
6	A I would have to agree with that because, again,	6	
7	that's outside of my purview and I can't speak to	7	
8	section 1881A of the act.	8	
9	Q Okay. Those are all the questions I have.	9	Signature of Deponent
10	MR. DUERK: Thank you for your time.	10	() No amendments
11	Thanks for being here.	11	() Amendments attached
12	THE WITNESS: Yeah. Thanks.	12	Acknowledged before me this _____ day of
13	THE VIDEOGRAPHER: Okay. That concludes	13	2023.
14	today's proceedings. The time is 4:41 and we	14	
15	are off the record.	15	Notary Public: _____
16	THE COURT REPORTER: Thank you.	16	My Commission Expires _____
17	Mr. Duerk, would you like to purchase the	17	Seal: _____
18	transcript?	18	
19	MR. DUERK: Yes, please.	19	
20	THE COURT REPORTER: And Mr. Bechtold,	20	
21	would you like to purchase?	21	
22	MR. BECHTOLD: Yes.	22	
23	THE COURT REPORTER: Okay.	23	
24	MR. KAKUK: We would like one as well.	24	
25	(Deposition concluded at 4:41 PM.)	25	

		Page 175	Page 176
1	STATE OF COLORADO)	1	AB LITIGATION SERVICES
2) ss. REPORTER'S CERTIFICATE	2	216 Sixteenth Street, Suite 600
3	COUNTY OF DENVER)	3	Denver, Colorado 80202
4		4	May 30, 2023
5	I, Annie Sager, certify that I am a	5	Michael Kakuk, Assistant U.S. Attorney
6	Court Reporter and Notary Public within the	6	U.S. Department of Justice
7	State of Colorado; that previous to the	7	United States Attorney's Office
8	commencement of the examination, the deponent	8	901 Front Street, Suite 1100
9	was duly sworn to testify to the truth.	9	Helena, Montana 59626
10	I further certify that this deposition	10	Re: Deposition of Heather Hillmann
11	was taken in shorthand by me at the time and	11	BNSF vs. CARD
12	place herein set forth and was thereafter	12	Case No. CV-19-40-M-DLC
13	reduced to typewritten form, and that the	13	The aforementioned deposition is ready for reading and
14	foregoing constitutes a true and correct	14	signing. Please attend to this matter by following BOTH of
15	transcript.	15	the items indicated below:
16	I further certify that I am not related	16	_____ Call 303-296-0017 and arrange with
17	to, employed by, nor of counsel for any of the	17	us to read and sign the deposition in our
18	parties or attorneys herein, nor otherwise	18	office
19	interested in the result of the within action.	19	_____ XXX Have the deponent read your copy and sign the
20	In witness whereof, I have affixed my	20	signature page and amendment sheets, if
21	signature this 30th day of May, 2023.	21	applicable; the signature page is attached
22	My commission expires June 25, 2023.	22	_____ Read the enclosed copy of the deposition and
23		23	sign the signature page and amendment sheets,
24	<i>Annie Sager</i>	24	if applicable; the signature page is attached
25	Annie Sager	25	_____ XXX WITHIN 30 DAYS OF THE DATE OF THIS LETTER
	216 Sixteenth Street, Suite 600		_____ By _____ due to a trial date of _____
	Denver, Colorado 80202		21 Please be sure the original signature page and amendment
			22 sheets, if any, are SIGNED BEFORE A NOTARY PUBLIC and
			23 returned to AB Litigation Services for filing with the
			24 original deposition. A copy of these changes should also be
			25 forwarded to counsel of record. Thank you.
			AB LITIGATION SERVICES
			cc: All Counsel

Max Baucus

Vol. 1

07/19/2022

Fisher Court Reporting

Exhibit 2-1

Baucus, Max Vol. 1 07/19/2022

Page 1	IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA BNSF RAILWAY COMPANY, on behalf of THE UNITED STATES OF AMERICA, Plaintiff, vs. Cause No. CV-19-40-M-DLC THE CENTER FOR ASBESTOS RELATED DISEASE, INC., Defendant.	Page 3 1 2 3 4 EXAMINATION OF SENATOR MAX BAUCUS BY: PAGE: 5 6 Mr. Adam Duerk, Esq. 6 7 8 9 10 11 12 13 14 15 16 VIDEO DEPOSITION UPON ORAL EXAMINATION OF 17 SENATOR MAX BAUCUS 18 19 BE IT REMEMBERED, that the video-taped deposition 20 upon oral examination of SENATOR MAX BAUCUS, appearing at 21 the instance of the Defendant, was taken at the offices of 22 Fisher Court Reporting, 442 E. Mendenhall, Bozeman, 23 Montana, on July 19, 2022, beginning at 10:00 a.m., 24 pursuant to Montana Rules of Civil Procedure, before Robyn 25 Ori English, Court Reporter - Notary Public.
Page 2	APPEARANCES OF COUNSEL ATTORNEY APPEARING ON BEHALF OF THE PLAINTIFF: W. ADAM DUERK Knight Nicastro Mackay, LLC 283 West Front Street, Suite 203 Missoula, MT 59802 duerk@knightnicastro.com ATTORNEY APPEARING ON BEHALF OF THE DEFENDANT: TIMOTHY BECHTOLD Bechtold Law Firm, PLLC P.O. Box 7051 Missoula, MT 59807 tim@bechtoldlaw.net	Page 4 1 2 3 DEPOSITION EXHIBITS: PAGE: 4 5 Previously marked as Exhibits 1 through 5. Re-marked as 6 follows: 7 8 Exhibit 108 Declaration of Senator Max 7 9 Baucus 10 Exhibit 109 CARD's Statement of Disputed .. 15 11 Facts 12 Exhibit 110 Congressional Record - 29 13 Senate Proceedings and 14 Debates of the 111th 15 Congress, First Session, 16 Saturday, December 19, 2009 17 Exhibit 111 CARD's Expert Witness 30 18 Disclosure 19 Exhibit 112 Congressional Record - 32 20 Senate Proceedings and 21 Debates of the 111th 22 Congress, First Session - 23 Monday, December 21, 2009 24 25

Page 5

1 VIDEO OPERATOR: This is the video-recorded and
 2 video-conferenced deposition of Max Baucus, taken in the
 3 United States District Court for the District of Montana,
 4 Cause No. CV-19-40-M-DLC, BNSF Railway Company versus The
 5 Center for Asbestos Related Disease, Inc.

6 Today is July 19th, 2022. The time is
 7 10:15 a.m. We are present with the witness at the offices
 8 of Fisher Court Reporting, at 442 East Mendenhall Street
 9 in Bozeman, Montana. The Court Reporter is Robyn Ori
 10 English, and the Video Operator is Nicole Tomac of Fisher
 11 Court Reporting. The deposition is being taken pursuant
 12 to Notice.

13 I would now ask the attorneys to identify
 14 themselves, who they represent and whoever else is
 15 present.

16 MR. DUERK: Adam Duerk for Relator, BNSF.

17 MR. BECHTOLD: And Tim Bechtold for The Center for
 18 Asbestos Related Diseases and with the deponent, Max
 19 Baucus.

20 VIDEO OPERATOR: The Court Reporter will now
 21 administer the oath.

22

23

24

25

Page 7

1 Q. Fair enough. And Senator Baucus, there
 2 was a Notice of Deposition in this matter that asked
 3 for you to appear and also bring any materials in
 4 your file related to this case. And, sir, it's
 5 perfectly understandable and acceptable if there is
 6 no such file, but I have to cover that.

7 A. Yeah, no, I don't have any file.

8 Q. Okay. In terms of the materials that you
 9 reviewed in forming your expert opinions, what
 10 materials in this matter did you review?

11 A. Not much, frankly. I went back and just
 12 thought about it all and gave it a lot of thought,
 13 but that's all I did.

14 Q. All right. Sir, I'll be going through
 15 several different documents and pieces of paper
 16 during the deposition today. Before I get into any
 17 of those deposition exhibits, one of those exhibits
 18 will be your signed declaration in this case. I'll
 19 put in front of you what we'll mark as Exhibit 1 for
 20 purposes of this deposition.

21

22 (Deposition Exhibit No. 1 was marked
 23 for identification)

24

25 Q. (By Mr. Duerk) Do you see your

Page 6

1 WHEREUPON, the following proceedings were had and
 2 testimony taken, to wit.

3

4 MAX BAUCUS,
 5 called as a witness herein, having been first duly sworn,
 6 was examined and testified as follows:

7 EXAMINATION

8 BY MR. DUERK:

9 Q. Good morning.

10 A. Hi.

11 Q. Would you please state your full legal
 12 name for the record?

13 A. Max Sieben Baucus.

14 Q. I'll be referring to you as Senator
 15 Baucus throughout the course of this deposition.

16 Senator Baucus, where do you currently
 17 reside?

18 A. 257 Blue Roan Lane, Belgrade, Montana.

19 Q. Sir, you've been named as a hybrid expert
 20 witness in this case. What did you review in
 21 preparation for your deposition today?

22 A. My -- my memory.

Page 8

1 declaration in front of you?

2 A. I do.

3 Q. If we could cover a few particulars about
 4 it, in terms of that declaration, when was the first
 5 time -- first of all, the signature on this
 6 declaration is dated -- it appears to be
 7 February 11th, 2022; is that correct?

8 A. Yeah.

9 Q. Sir, when did you first have any
 10 communication with anyone else about this
 11 declaration to the best of your memory?

12 A. Oh, gosh, essentially when I first --
 13 when the -- I saw this just a few days ago, it was
 14 mailed to me, but also, frankly, the substance of it
 15 was something I asked to be -- to be true in the
 16 first place. I mean, I don't -- I didn't get down
 17 in the weeds in the details.

18 I knew that -- I worked very hard to
 19 get -- to help generally the people of Libby,
 20 Montana, because they are just put upon by the Great
 21 Basin by the railroad. And among many things that I
 22 did to help the people was to assure that they could
 23 get screened to determine whether they have
 24 asbestos-related diseases.

25 And so I made it very clear to my office

Page 9

1 that I wanted the Affordable Care Act to include the
 2 material that's in this declaration; that is, that
 3 the -- under the act, the CARD clinic is qualified
 4 to screen. And it was very, very important to me
 5 that that be the case.

6 Q. And, sir, my question goes specifically
 7 to the time frame involved in when you first saw
 8 this declaration. So I'd like to focus my questions
 9 on that topic.

10 A. Yeah, well, I first saw the -- the actual
 11 declaration recently.

12 Q. Okay.

13 A. But that's not the point. The point is
 14 that it's -- it reflects what I believe.

15 Q. Okay. I understand that.

16 So in terms of when you first saw the
 17 declaration, I'm assuming, based on your signature
 18 of February 11th, 2022, you saw this at some point
 19 before you signed it, correct?

20 A. Not before.

21 Q. Okay. Did you, yourself, have any role
 22 in generating this declaration?

23 A. That's my intent. That's what I
 24 believed.

25 Q. And here I'm talking about just the nuts

Page 11

1 A. I do not.

2 Q. Okay. Do you recall any conversations
 3 with anybody about the possibility of signing this
 4 declaration?

5 A. No, I don't. Well, I don't recall, but
 6 there's no reason why I should because it's -- it's
 7 accurate. It is what I believe. So I didn't give
 8 it much thought.

9 Q. Based on other deposition testimony, it's
 10 my understanding that there was some communication
 11 between the CARD clinic or those affiliated with the
 12 CARD clinic and your office to ask if you would sign
 13 this declaration and serve as a witness in this
 14 case.

15 A. That could be, yeah.

16 Q. Okay. Do you recall when those
 17 conversations --

18 A. I don't know.

19 Q. -- occurred? Okay.

20 When was the last time, to the best of
 21 your recollection, that you had a conversation with
 22 Dr. Charles Brad Black?

23 A. He asked if I would be willing to be
 24 deposed.

25 Q. Okay.

Page 10

1 and bolts of the document itself.

2 Sir, did you draft this declaration?

3 A. Oh, personally, no.

4 Q. Okay.

5 A. But I had people working for me draft it.

6 Q. Okay.

7 A. Because I wanted them to convey my
 8 wishes.

9 Q. All right. And who was involved in
 10 drafting this declaration?

11 A. I could not tell you specifically.

12 Q. Okay.

13 A. It's -- it's -- all I know -- I know
 14 specifically is that when the ACA was before us, I
 15 made it clear to my office that I wanted this -- the
 16 substance of this to be included in the ACA.

17 Q. Understood.

18 Prior to signing the declaration, do you
 19 recall speaking with anyone in particular about the
 20 substance?

21 A. No, I don't. Someone gave it to me and
 22 said, "Is this accurate?"

23 And I said, "Yes, it's accurate."

24 Q. Okay. Do you recall who that someone
 25 was?

Page 12

1 A. And that was -- that was a month ago, two
 2 months ago, something like that.

3 Q. All right. Prior to that discussion with
 4 Dr. Black two months ago about today's deposition,
 5 when was the next conversation that you had with
 6 Dr. Black?

7 A. I don't know.

8 Q. Okay. How long has it been -- I'm
 9 assuming that you had a conversation with Dr. Black
 10 earlier in time about matters unrelated to this
 11 deposition?

12 A. I've had an infinite number of
 13 conversations with Dr. Black with many people in
 14 Libby with many government officials. Nothing has
 15 been more important -- nothing has been more
 16 important to me during my 36 years in the United
 17 States Senate than finding justice for the people of
 18 Libby.

19 Therefore, I've had an infinite number --
 20 I've had -- I brought secretaries, cabinet
 21 secretaries to Libby. Dr. Black was probably part
 22 of all of that. That's just an example, frankly.
 23 The point is that -- that -- to answer your
 24 question, yes, many times Dr. Black -- I have total
 25 confidence and faith in Dr. Black. He's an

Page 13

1 excellent physician.
 2 Q. And the point of my questions and what
 3 I'm trying to get at is in terms of the
 4 conversations that you had with Dr. Black or anyone
 5 else at CARD, what conversations, if any, about this
 6 lawsuit did you have with Dr. Black?

7 A. None.

8 Q. Okay.

9 A. Other -- other than being sued.

10 Q. Okay.

11 A. "Hey, do you mind being" -- basically he
 12 said, "You don't have to do this." You know, "I'm
 13 not asking you to do this. This is happening. If
 14 you want to be deposed, that's up to you."

15 And I said, "I absolutely want to because
 16 I want to do anything I possibly can to bring
 17 justice to the people of Libby, Montana."

18 Q. Understood.

19 How long was that conversation with
 20 Dr. Black where he asked if you would be deposed?

21 A. About 15 minutes.

22 Q. Do you recall Dr. Black sending you any
 23 written materials either before or after that the
 24 conversation?

25 A. No. Not only do I not recall, he did

Page 15

1 Q. Have you reviewed any deposition
 2 testimony in this case?
 3 A. I have not.
 4 Q. Okay. And have you reviewed any exhibits
 5 to deposition testimony?

6 A. No.

7 Q. Have you reviewed any EHH Medicare claim
 8 forms?

9 A. No.

10 Q. So fair to say, and I think we've covered
 11 it now, but, Senator, in preparation for your
 12 declaration and your hybrid expert disclosure in
 13 this matter, you have reviewed no written documents
 14 of any kind?

15 A. Correct.

16 Q. Okay. Senator Baucus, I'd like to cover
 17 just a few basic foundational principles here.
 18 There have been some facts that are considered
 19 undisputed in this case, and I'm marking it as
 20 Deposition Exhibit 2.

21
 22 (Deposition Exhibit No. 2 was marked
 23 for identification)
 24
 25 Q. (By Mr. Duerk) Sir, although the title

Page 14

1 not.
 2 Q. Okay. I want to broaden the question a
 3 little bit further. Do you recall anyone sending
 4 you any written materials in anticipation of your
 5 deposition testimony?

6 A. No, no, no.

7 Q. Okay. Broadening the question further
 8 still, do you recall anyone from CARD or anywhere
 9 else sending you any materials for you to consider
 10 prior to signing your declaration?

11 A. No.

12 Q. Okay. And I think we've covered it, and
 13 I'm sorry to belabor the point, but in terms of
 14 written materials, have you reviewed the Third
 15 Amended Complaint in this matter?

16 A. No.

17 Q. Okay. Have you reviewed the Statement of
 18 Undisputed Facts in this matter?

19 A. I have not.

20 Q. Have you reviewed any of the discovery
 21 requests including the Requests for Production?

22 A. No.

23 Q. Okay. Have you reviewed any of the
 24 pleadings in this matter?

25 A. No.

Page 16

1 of this document, this pleading states that it is
 2 CARD Statement of Disputed Facts, there are
 3 individual facts listed here with a response from
 4 CARD in bold face as to whether the fact mentioned
 5 is disputed or undisputed.

6 Do you see Exhibit 2 in front of you?

7 A. I do.

8 Q. Okay. I'd like to read just a few of
 9 these undisputed facts and see whether based on your
 10 experience and personal knowledge you would agree,
 11 okay?

12 A. All right.

13 Q. Statement of Fact 1: "The Environmental
 14 Health Hazards provisions of the Affordable Care Act
 15 found at Section 1881A address Medicare coverage for
 16 individuals exposed to environmental health
 17 hazards."

18 This states, "Undisputed."

19 Would you agree that the Affordable Care
 20 Act in the Environmental Health Hazards provision
 21 relates to individuals exposed to environmental
 22 health hazards?

23 A. To the best of my knowledge.

24 Q. According to language found in this
 25 section of the Affordable Care Act, for purposes of

<p>Page 17</p> <p>1 eligibility for benefits under this title an 2 individual must be determined to be an environmental 3 exposure affected individual."</p> <p>4 "Undisputed."</p> <p>5 Would you agree?</p> <p>6 A. Yep. If that's in the -- if that's in 7 the statute.</p> <p>8 Q. All right.</p> <p>9 A. Is it in there?</p> <p>10 Q. It is in there, and it is considered 11 undisputed.</p> <p>12 A. Okay, if it's in there.</p> <p>13 Q. All right.</p> <p>14 A. No reason to dispute it.</p> <p>15 Q. Okay. "Those conditions are: 22 Asbestosis, pleural thickening or pleural plaques as 23 established by interpretation by a 'B Reader' 24 qualified physician of a plain chest x-ray or 25 interpretation of a computed tomographic radiograph</p>	<p>Page 19</p> <p>1 Section 1881 of the Affordable Care Act that creates 2 an exception for a patient to be eligible for 3 Medicare benefits without a diagnosis."</p> <p>4 "Undisputed."</p> <p>5 Would you agree?</p> <p>6 A. Yep.</p> <p>7 Q. "Black's Law defines 'diagnosis' as: 'A 8 medical term, meaning the discovery of the source of 9 a patient's illness or the determination of the 10 nature of his disease from a study of its 11 symptoms.'"</p> <p>12 "Undisputed."</p> <p>13 Do you agree?</p> <p>14 A. I've never -- I haven't looked at my 15 Black's Law dictionary in 40 years. I have no idea.</p> <p>16 Q. Fair enough. Are there any facts that 17 you're aware of as you sit here today that would 18 lead you to dispute fact No. 7?</p> <p>19 A. No.</p> <p>20 Q. Okay. This next one references CARD's 21 website. And, sir, I'll probably ask you some 22 predicate questions here. But have you ever seen 23 CARD's website that you can recall?</p> <p>24 A. No, no.</p> <p>25 Q. Okay. I'll phrase it this way: "In</p>
<p>Page 18</p> <p>1 of the chest by a qualified physician, as determined 2 by the Secretary; or, two, such other diagnostic 3 standards as the Secretary specifies, except that 4 this clause shall not apply to pleural thickening or 5 pleural plaques unless there are symptoms or 6 conditions requiring medical treatment as a result 7 of these diagnoses. Mesothelioma, or malignancies 8 of the lung, colon, rectum, larynx, stomach, 9 esophagus, pharynx, or ovary; any other diagnosis 10 which the Secretary, in consultation with the 11 Commissioner of Social Security, determines is an 12 asbestos-related medical condition, as established 13 by such diagnostic standards as the Secretary 14 specifies."</p> <p>15 That fact is "Undisputed."</p> <p>16 Would you agree?</p> <p>17 A. As far as I can tell.</p> <p>18 Q. The language in the EHH provisions of 19 the Affordable Care Act uses the terms 'diagnosis,' 20 'established by,' and 'interpretation' when 21 describing environmental exposed individuals."</p> <p>22 "Undisputed."</p> <p>23 Would you agree?</p> <p>24 A. To the best of my knowledge, yes.</p> <p>25 Q. Okay. "There is no provision stated in</p>	<p>Page 20</p> <p>1 order to be eligible for Medicare benefits under the 2 Affordable Care Act, an individual must have a 3 diagnosis of an asbestos-related disease."</p> <p>4 Would you agree?</p> <p>5 MR. BECHTOLD: Foundation.</p> <p>6 THE WITNESS: Would I agree?</p> <p>7 Q. (By Mr. Duerk) Yes.</p> <p>8 A. I mean, it's -- "According to CARD's" -- 9 I don't know. I haven't seen it.</p> <p>10 Q. Okay.</p> <p>11 A. So how -- I can't respond. I haven't 12 seen it.</p> <p>13 Q. And that's why I'm phrasing it just this 14 way. Regardless of whether or not CARD's website 15 says that an individual must have a diagnosis of an 16 asbestos-related disease in order to be eligible for 17 Medicare, would you agree that in order to be 18 eligible for Medicare benefits under the Affordable 19 Care Act an individual must have a diagnosis of an 20 asbestos-related disease?</p> <p>21 A. To the best of my knowledge, yes.</p> <p>22 Q. Okay. Now, again, the next question 23 starts with the language, "According to CARD." So 24 I'm going to change this question just to see if 25 you'd agree.</p>

<p>Page 21</p> <p>1 Senator Baucus, would you agree that the 2 purpose of the Environmental Health Hazard 3 provisions in the Affordable Care Act was to provide 4 Medicare benefits for people who were exposed to 5 Libby asbestos; not to provide Medicare benefits to 6 people who are not sick?</p> <p>7 A. Yes.</p> <p>8 Q. All right. Sir, you're welcome to review 9 these if you would like. However, I'll turn away 10 from this document as a basic line of questioning. 11 But based on your understanding of the Affordable 12 Care Act and your involvement in the Affordable Care 13 Act, is it your understanding that CARD's purpose 14 was to diagnosis individuals with asbestos-related 15 disease and where those patients were diagnosed to 16 submit them for Medicare benefits if they were 17 eligible?</p> <p>18 A. Generally correct, yeah.</p> <p>19 Q. Okay. And consistent with what we've 20 been discussing here, it was not the purpose of the 21 Affordable Care Act, based on your understanding, to 22 allow people who were not sick to claim Medicare 23 eligibility --</p> <p>24 A. Correct.</p> <p>25 Q. -- for life, correct?</p>	<p>Page 23</p> <p>1 A. -- come up with something.</p> <p>2 Q. Yep, you bet.</p> <p>3 A. Just out of the blue, this is the first 4 time anybody's referenced it in a long time. So 5 this is the judiciary committee. This is a huge, 6 big document.</p> <p>7 Q. It is. And rather than having you -- or 8 asking you to try to refresh your recollection over 9 a very large document, I'll say at the outset that 10 this piece of legislation had what I'll label fairly 11 extensive history in Congress. It appears that this 12 bill was discussed and went up for hearing multiple 13 times between September 25th, 2002 and June of 2005. 14 I'm seeing half a dozen committee meetings and 15 hearings about this bill. So I don't want to ambush 16 you with what amounts to an Encyclopedia Britannica 17 full of information.</p> <p>18 A. It's pretty extensive here.</p> <p>19 Q. It is very -- it is very extensive. If I 20 describe it generally in a way that sounds accurate 21 to you, maybe that might help speed things along.</p> <p>22 A. This is in the judiciary committee.</p> <p>23 Q. Okay.</p> <p>24 A. I can just tell by looking at it that's 25 what it says.</p>
<p>Page 22</p> <p>1 A. Correct.</p> <p>2 Q. Thank you.</p> <p>3 I'd like to talk about your involvement, 4 Senator Baucus, in two pieces of legislation: not 5 only the Affordable Care Act and the EHH provisions 6 in the act, but also the Fair Act or the Fairness In 7 Asbestos Injury Resolution Act of 2005.</p> <p>8 I recognize that you've signed the 9 declaration about provisions, the EHH provisions in 10 the Affordable Care Act.</p> <p>11 In terms of The Fairness in Asbestos 12 Injury Resolution Act, do you recall having 13 involvement in that particular piece of legislation?</p> <p>14 A. I don't at this moment, but, my gosh, 15 that was what? This is, what, 2022? It was 18 16 years ago. I'd have to talk to my staff.</p> <p>17 Q. And I'm happy to --</p> <p>18 A. I have no -- it sounds like something I'd 19 do, but I would have to stop and talk to my staff.</p> <p>20 Q. Okay. Just as you sit here today, what 21 can you recall about The Fairness in Asbestos Injury 22 Resolution Act?</p> <p>23 A. Well, if you give the provisions to me, I 24 can look at it and be able to --</p> <p>25 Q. Sure.</p>	<p>Page 24</p> <p>1 Q. Yep, yep. In terms of the general goal 2 of The Fairness in Asbestos Injury Resolution Act or 3 the Fair Act, Senator, is it fair to say that in the 4 Senate, you and your colleagues were trying to 5 address a system or a method of addressing the 6 asbestos litigation difficulties in the United 7 States by coming up with some sort of fund to ensure 8 that people who were sickened by asbestos had a 9 remedy that would help them with their personal and 10 medical difficulties caused by asbestos exposure?</p> <p>11 A. I --</p> <p>12 MR. BECHTOLD: Foundation.</p> <p>13 THE WITNESS: What do you mean "foundation"?</p> <p>14 Q. (By Mr. Duerk) I think, not to speak for 15 Mr. Bechtold, but he is preserving the record with 16 some objections. By "foundation," I think he is 17 suggesting that maybe you don't know what I'm 18 talking about?</p> <p>19 A. Because you're right.</p> <p>20 Q. And that's what I'm trying to get at.</p> <p>21 A. Basically, that's right. I mean, I 22 was -- I was part of anything to help people in 23 Libby.</p> <p>24 Q. Yes.</p> <p>25 A. I was not on this committee.</p>

<p>Page 25</p> <p>1 Q. Okay.</p> <p>2 A. Just by looking at it. And so I was</p> <p>3 generally part of efforts to help people in Libby,</p> <p>4 but I cannot speak with -- I cannot speak with any</p> <p>5 specificity about this.</p> <p>6 Q. All right. Senator Baucus, do you recall</p> <p>7 whether you were co-sponsor of the Fair Act or</p> <p>8 any --</p> <p>9 A. I don't.</p> <p>10 Q. -- of the provisions of the Fair Act?</p> <p>11 A. No.</p> <p>12 Q. And that's okay.</p> <p>13 A. I don't know.</p> <p>14 Q. Sir, I'll represent to you that as part</p> <p>15 of the Fair Act, there is some mention in the record</p> <p>16 of your name and some observations that you had</p> <p>17 about it. Does that sound accurate to you?</p> <p>18 A. I'd have to go back and look at the</p> <p>19 record.</p> <p>20 Q. Understood.</p> <p>21 A. I'd have to, but it could be.</p> <p>22 Q. And to be clear, it's not my intent to</p> <p>23 try to summarize a 30-plus year career and ambush</p> <p>24 you with facts that you may not remember here. That</p> <p>25 said, there are some provisions in the Fair Act that</p>	<p>Page 27</p> <p>1 asbestos trust?</p> <p>2 A. I don't.</p> <p>3 Q. Okay.</p> <p>4 A. I was -- I'm not on this committee. I</p> <p>5 was focused much more on -- much more on Libby. As</p> <p>6 I look -- as I page through this, this is more</p> <p>7 general.</p> <p>8 Q. All right.</p> <p>9 A. Asbestos generally, it's not -- this is</p> <p>10 not just Libby.</p> <p>11 Q. That's correct.</p> <p>12 A. And my focus was Libby.</p> <p>13 Q. Yep. Understood.</p> <p>14 Is it fair to say that the Affordable</p> <p>15 Care Act also was very, very general, and the</p> <p>16 Affordable Care Act also had a special section on</p> <p>17 Libby, Montana?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. It's general, but there's a special</p> <p>21 section on Libby. That's correct.</p> <p>22 Q. And, sir, I'll represent to you that</p> <p>23 similar to the Affordable Care Act, the Fair --</p> <p>24 Fairness in Asbestos Injury Resolution Act of 2005</p> <p>25 also has special Libby provisions that I believe you</p>
<p>Page 26</p> <p>1 I would like to cover with you.</p> <p>2 A. It's going to be hard because I don't</p> <p>3 remember the Act.</p> <p>4 Q. Okay.</p> <p>5 A. Good luck.</p> <p>6 Q. All right. I'll represent to you the</p> <p>7 Fair Act attempted to come up with some medical</p> <p>8 criterion and exposure criterion for</p> <p>9 asbestos-related disease to determine whether or not</p> <p>10 individuals would be eligible for the trust funds</p> <p>11 set aside for people exposed to asbestos, who</p> <p>12 contracted asbestos-related disease. Does any of</p> <p>13 this sound familiar?</p> <p>14 MR. BECHTOLD: Foundation and form of the question.</p> <p>15 THE WITNESS: I was going to say, not really.</p> <p>16 Q. (By Mr. Duerk) All right. Sir, do you</p> <p>17 recall any of these committee hearings where you</p> <p>18 made statements in support of certain provisions</p> <p>19 under the Fair Act that would have established a</p> <p>20 fund for people affected by asbestos?</p> <p>21 A. I do not.</p> <p>22 Q. Okay. Sir, do you recall any statements</p> <p>23 you made during the discussions about the Fair Act</p> <p>24 that would have provided antifraud provisions to</p> <p>25 ensure that people didn't take advantage of the</p>	<p>Page 28</p> <p>1 advocated for because of asbestos exposure in</p> <p>2 Northwest Montana.</p> <p>3 A. It could be. It could be.</p> <p>4 Q. Okay.</p> <p>5 A. It was a general act.</p> <p>6 Q. Yes, understood. All right. Thank you,</p> <p>7 sir.</p> <p>8 Turning from the Fair Act to the</p> <p>9 Affordable Care Act, your purpose in advocating for</p> <p>10 EHH provisions in the Affordable Care Act was to</p> <p>11 make sure that people who were sick from Libby</p> <p>12 asbestos got a shot at Medicare eligibility,</p> <p>13 correct?</p> <p>14 A. Correct.</p> <p>15 Q. All right. And I think as we've</p> <p>16 discussed, was it your intent to make sure that</p> <p>17 anyone diagnosed with asbestos-related disease in</p> <p>18 Libby would be eligible for Medicare benefits?</p> <p>19 A. Uh-huh.</p> <p>20 Q. I'll represent to you that the Fair Act</p> <p>21 has some antifraud provisions or mention of</p> <p>22 antifraud provisions in it. Was it your intent to</p> <p>23 ensure that the Affordable Care Act also had some</p> <p>24 antifraud provisions in it?</p> <p>25 A. Not to my recollection.</p>

<p>Page 29</p> <p>1 Q. Okay.</p> <p>2 A. Didn't focus on that. It may have. It's</p> <p>3 a huge Act. I had 10 staffers writing it. So it's</p> <p>4 a big document.</p> <p>5</p> <p>6 (Deposition Exhibit No. 3 was marked</p> <p>7 for identification)</p> <p>8</p> <p>9 Q. (By Mr. Duerk) Senator Baucus, I'm</p> <p>10 marking Deposition Exhibit 3 in this case. Sir, do</p> <p>11 you recall that certain excerpts from the</p> <p>12 congressional record were referenced in your expert</p> <p>13 disclosure in this case?</p> <p>14 A. What is the question?</p> <p>15 Q. Sure. Were you aware that certain</p> <p>16 records -- certain excerpts from the congressional</p> <p>17 record were referenced in relation to your expert</p> <p>18 disclosure in this case?</p> <p>19 MR. BECHTOLD: Form of the question. Mr. Baucus did</p> <p>20 not do an expert disclosure.</p> <p>21 THE WITNESS: Again, this is all -- it's interesting</p> <p>22 that I have to go back and review it. It's the first I've</p> <p>23 seen this.</p> <p>24 Q. (By Mr. Duerk) All right. Sir, were</p> <p>25 you --</p>	<p>Page 31</p> <p>1 Q. All right. I'm sorry. That's why I just</p> <p>2 said please turn to the third page.</p> <p>3 A. Third page?</p> <p>4 Q. Do you see your name here?</p> <p>5 A. I do.</p> <p>6 Q. Okay. It says, "CARD also discloses the</p> <p>7 following hybrid expert witnesses."</p> <p>8 A. Right, yep.</p> <p>9 Q. Okay. No. 1 there is the Honorable Max</p> <p>10 Baucus. The final sentence here reads, "Ambassador</p> <p>11 Baucus' Declaration and excerpts from the</p> <p>12 Congressional Record, attached here, contain his</p> <p>13 expected testimony."</p> <p>14 Did I read that sentence correctly?</p> <p>15 A. You've read it correctly.</p> <p>16 Q. Okay. Prior to your deposition today and</p> <p>17 prior to filling out your declaration in this</p> <p>18 matter, did you review any excerpts from the</p> <p>19 Congressional Record?</p> <p>20 A. No, I did not.</p> <p>21 Q. All right. Now I understand why there's</p> <p>22 the disconnect. So I apologize, sir. I am</p> <p>23 referencing a few excerpts of the Congressional</p> <p>24 Record that are referenced by CARD's Expert</p> <p>25 Disclosure.</p>
<p>Page 30</p> <p>1 A. It's not like I can't relate to this. I</p> <p>2 would have to study it.</p> <p>3 Q. All right.</p> <p>4 A. Probably bring back some memories. I</p> <p>5 haven't seen it yet, so I can't respond.</p> <p>6</p> <p>7 (Deposition Exhibit No. 4 was marked</p> <p>8 for identification)</p> <p>9</p> <p>10 Q. (By Mr. Duerk) If we can mark Exhibit 4</p> <p>11 in this case. Do you see CARD's Expert Witness</p> <p>12 Disclosure in front of you?</p> <p>13 A. Yes, I do.</p> <p>14 Q. If you would turn to the third page of</p> <p>15 CARD's Expert Witness Disclosure. Do you see your</p> <p>16 name there?</p> <p>17 A. I do.</p> <p>18 Q. In terms of this disclosure, in the last</p> <p>19 sentence on page 3, it says, "Ambassador Baucus'</p> <p>20 Declaration and excerpts from the Congressional</p> <p>21 Record" --</p> <p>22 A. Page 3?</p> <p>23 Q. Yes. Page 3 under your name.</p> <p>24 A. Well, first of all, these aren't</p> <p>25 numbered.</p>	<p>Page 32</p> <p>1 It was my understanding -- or my</p> <p>2 assumption, rather, that you had seen these before,</p> <p>3 so I apologize.</p> <p>4 A. No, I have not.</p> <p>5 Q. If we could look at what's been marked as</p> <p>6 Exhibit 3. Do you see an excerpt from the</p> <p>7 Congressional Record dated Saturday, December 19th,</p> <p>8 2009?</p> <p>9 A. On page 1?</p> <p>10 Q. Yes.</p> <p>11 A. It says, "Sunday, December 19" at the</p> <p>12 top.</p> <p>13 Q. Okay. All right. And you had not</p> <p>14 reviewed this prior to your deposition today?</p> <p>15 A. That is correct.</p> <p>16 Q. Okay.</p> <p>17 A. First I've seen it.</p> <p>18 Q. All right.</p> <p>19 MR. DUERK: If you could mark Exhibit 5.</p> <p>20</p> <p>21 (Deposition Exhibit No. 5 was marked</p> <p>22 for identification)</p> <p>23</p> <p>24 THE WITNESS: It's awfully complicated. When Donald</p> <p>25 Trump was trying to review the Affordable Care Act, you</p>

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1 probably saw that he complained how complicated it is.
 2 And it is true, I've seen -- I don't know anything I've
 3 experienced that is more complicated than the wording of
 4 the Affordable Care Act. So I'd have to go back and look
 5 at all the different parts if you want me -- if you want
 6 me to try to refresh my recollection, but this is the
 7 first I've seen of this.

8 Q. Okay. Turning to Exhibit 5 in front of
 9 you, do you see another excerpt from the
 10 Congressional Record --

11 A. I do.

12 Q. -- dated Monday, December 21st, 2009?

13 A. Yep.

14 Q. Okay. And prior to your deposition
 15 today, had you seen or reviewed this excerpt of the
 16 Congressional Record?

17 A. Nope. First time I've seen it.

18 Q. Okay. What I'd like to do is turn to
 19 certain sections of Exhibit 5. Do you see the first
 20 highlighted section in this exhibit?

21 A. How many pages in would that be?

22 Q. I think just a few.

23 A. There we are.

24 Q. All right. What is the first sentence in
 25 Exhibit 5 on this page?

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1 A. I did not. It says stuff which I agree
 2 with.

3 Q. Okay.

4 A. W.R. Grace belched lots of stuff up,
 5 belched 5,000 pounds of asbestos in the air around
 6 Libby. That's not a good thing.

7 Q. I understand that. In terms of --

8 A. I want to make sure you do. That's where
 9 I'm coming from. You know, I don't know if you
 10 really understand. There is nothing --

11 Q. Sir -- sorry, I have not yet asked a
 12 question.

13 A. I can't talk?

14 Q. Not until the question has been posed.

15 A. Okay.

16 Q. That's what a deposition is.

17 A. I'm sorry.

18 Q. That's okay. That's okay.

19 Sir, following up on whether or not I
 20 understand what's going on in Libby, we can both
 21 agree that before an expert or a witness shares
 22 their opinions about a matter, they need to be armed
 23 with all of the facts; is that fair?

24 A. Well, I'm not -- I'm not here as an
 25 expert witness, am I?

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1 A. What -- what does it say?

2 Q. Yes.

3 A. The top or what do I say? What's your
 4 question?

5 Q. First of all, do you see your name
 6 indicated here?

7 A. I do.

8 Q. All right. Does this excerpt from the
 9 Congressional Record show what you were saying on
 10 the -- in Congress on this day December 19th, 2009?

11 A. I cannot tell you.

12 Q. Okay.

13 A. I don't know for sure.

14 Q. All right.

15 A. I would have to put all of this back into
 16 context again. Just -- just to pull something out
 17 way back then -- it's a long -- and it's been years
 18 ago -- without my reviewing it, it's hard for me to
 19 respond to it.

20 Q. Understood. And in terms of your
 21 preparation for your declaration and your expert
 22 hybrid opinions in this case, you do not recall
 23 reviewing this particular testimony?

24 A. That's correct.

25 Q. Okay. Thank you.

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1 Q. Sir, that's how you've been disclosed.

2 A. You just used the word "hybrid." I don't
 3 know what that means.

4 Q. Okay.

5 A. What does "hybrid" mean?

6 Q. I can't testify or answer questions here
 7 today, so I want to be mindful of the rules.

8 A. Okay. So why don't you ask the question
 9 again.

10 Q. Okay. Sir, in order to have meaningful
 11 testimony --

12 A. Right.

13 Q. -- a witness must be armed with facts,
 14 fair?

15 A. Generally.

16 Q. Okay. Is there a situation that you can
 17 imagine where it wouldn't be important for a witness
 18 to know the facts of a case?

19 A. No.

20 Q. Okay. So would you agree that in order
 21 to offer any opinions about any matter, it's
 22 important for a witness to be equipped with the
 23 facts, fair?

24 A. Yeah.

25 Q. And, sir, I am not meaning to suggest in

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1 any way that you are not equipped with the facts of
 2 what happened with legislation related to Libby,
 3 Montana. You have a very clear record of your
 4 involvement there.

5 What I am addressing is that in terms of
 6 this particular legal case, you have not reviewed
 7 any of the complaints that have been drafted by
 8 Relator about the CARD clinic here, correct?

9 MR. BECHTOLD: Asked and answered.

10 THE WITNESS: The complaints?

11 Q. (By Mr. Duerk) Correct.

12 A. I've -- I've -- I have what which is in
 13 front of me; the declaration, that's what I have.

14 Q. All right. Outside of that declaration,
 15 you have not reviewed the Third Amended Complaint?

16 A. I have not.

17 MR. BECHTOLD: Asked and answered.

18 THE WITNESS: Yeah, it has been answered.

19 Q. (By Mr. Duerk) All right. Sir, in terms
 20 of claims for Medicare coverage in Libby, based on
 21 the EHH provisions in the Affordable Care Act, I
 22 think we've covered most of this, but you would
 23 agree that your intent in the Senate was to provide
 24 eligibility for Medicare benefits for people who had
 25 a diagnosis of asbestos-related disease, correct?

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1 what they should be doing.
 2 And we're talking about people in Libby.
 3 People in Libby, Montana, are way out in the corner
 4 of Montana. They're not in -- in the big city. And
 5 they were taken advantage of. No question. And
 6 looking for remedies, looking for help.

7 Let me just tell you that I'm just --
 8 I'll just finish answering your question about the
 9 need for Medicare benefits. Because I'll be
 10 damned -- when I met Les Skramstad in the living
 11 room of Gayla Benefield in Libby -- in Libby,
 12 Montana, he -- I was clear how they needed benefits.
 13 They weren't getting them. They weren't getting
 14 them.

15 And I said to Les, "There's nothing more
 16 important to me to make sure that justice is brought
 17 to the people of Libby, Montana."

18 And he said, "Senator, many people have
 19 said that to us, and nobody's come through, and I'm
 20 going to be watching you."

21 And he didn't have to watch me because I
 22 knew I was going to do it anyway.

23 So to answer your question, absolutely.
 24 It's very important that they get Medicare benefits
 25 because the company was not giving the benefits.

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1 A. That's correct. I worked hard on that.
 2 It was very hard for me to get that. I mean, for
 3 many years I tried to get the U.S. government to
 4 declare a -- a health emergency for Libby, and they
 5 would not even though EPA Administrator Christie
 6 Whitman was very much in favor of it several years
 7 ago. I talked with her about it extensively. And
 8 she agreed, as an administrator -- administrator
 9 should have the power to declare an emergency which
 10 would trigger Medicare benefits to eligible folks in
 11 Libby.

12 But that was turned down by Andy Card at
 13 the White House. It was only when Obama was elected
 14 President, I went to Secretary Sebelius and EPA
 15 Administrator Lisa Jackson, and she agreed that
 16 there should be a declaration in this matter for
 17 Libby, and I was so relieved.

18 And so as part of that, I want to make
 19 sure that the people actually received the benefits
 20 even though the declaration was given. And in this
 21 case, we're talking here about the provisions in the
 22 Affordable Care Act with respect to screening.
 23 Because I was very concerned that there would be
 24 bureaucratic delays, maybe skullduggery, the company
 25 would -- people just don't like to do what -- often

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1 Q. And in turn --
 2 A. Since the company is not giving benefits,
 3 someone had to give them benefits.

4 Q. And in terms of that company, Les
 5 Skramstad worked for W.R. Grace?

6 A. That's correct.

7 Q. Sir, in terms of Les Skramstad, you met
 8 with Mr. Skramstad multiple times?

9 A. Correct.

10 Q. And over the course of several years, you
 11 saw Mr. Skramstad's medical decline due to
 12 asbestos-related disease?

13 A. Correct.

14 Q. Mr. Skramstad had asbestosis; is that
 15 correct?

16 A. I don't know what it was, but he was
 17 sick.

18 Q. Mr. Skramstad -- and I believe your
 19 statements on the Senate floor bear this out -- but
 20 Mr. Skramstad worked for W.R. Grace and would come
 21 home with what was called take-home dust on his
 22 overall?

23 A. That's correct.

24 Q. And that take-home dust sickened
 25 Mr. Skramstad, correct?

<p>Page 41</p> <p>1 A. That's my understanding.</p> <p>2 Q. All right. Is there any question in your</p> <p>3 mind that Mr. Skramstad suffered from an</p> <p>4 asbestos-related disease?</p> <p>5 A. No.</p> <p>6 Q. Your intent in terms of putting these EHH</p> <p>7 provisions into the Affordable Care Act was to</p> <p>8 protect individuals like Mr. Skramstad who had been</p> <p>9 exposed to Libby amphibole and doctors determined to</p> <p>10 have an asbestos-related disease, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Okay. And one of the provisions drafted</p> <p>13 into the Affordable Care Act is to enshrine those</p> <p>14 protections for people like Les Skramstad by making</p> <p>15 it clear that if someone has a diagnosis of an</p> <p>16 asbestos-related disease, that they're sick from</p> <p>17 exposure to Libby asbestos, they are Medicare</p> <p>18 eligible?</p> <p>19 A. Whoever they are. Anybody that fits that</p> <p>20 description --</p> <p>21 Q. All right.</p> <p>22 A. -- including Les and anybody else.</p> <p>23 Les died, as you know, because of this,</p> <p>24 and his wife died and his kids died. And it's</p> <p>25 just -- so it's not just Les. It's other people in</p>	<p>Page 43</p> <p>1 A. Yes.</p> <p>2 Q. Is it also true that Christine Todd</p> <p>3 Whitman, Kathleen Sebelius, the others that you</p> <p>4 mentioned, to the best of your understanding, like</p> <p>5 you, were not trying to just give everyone in Libby</p> <p>6 a free pass. You were not drafting legislation that</p> <p>7 would just make everybody in Libby, Montana,</p> <p>8 Medicare eligible?</p> <p>9 A. Correct.</p> <p>10 Q. So if somebody lived in Libby but they</p> <p>11 weren't sick, it wasn't your intent to draft a law</p> <p>12 that would give them a Medicare free card for life</p> <p>13 even though they didn't have asbestos-related</p> <p>14 disease?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. Earlier, when I was talking about</p> <p>17 the Fair Act and some of its similarities to the EHH</p> <p>18 provisions in the Affordable Care Act, I was</p> <p>19 talking -- I was asking you some questions about</p> <p>20 antifraud provisions.</p> <p>21 Sir, it was never your intent to make it</p> <p>22 easier for anyone to defraud the Medicare program</p> <p>23 based on provisions that you had a hand in passing?</p> <p>24 A. Correct.</p> <p>25 Q. Okay.</p>
<p>Page 42</p> <p>1 the community.</p> <p>2 Q. Understood. I know that this is --</p> <p>3 A. And even across the country it had --</p> <p>4 exposed to asbestos.</p> <p>5 Q. I understand that this bill was not only</p> <p>6 for Mr. Skramstad.</p> <p>7 A. Correct.</p> <p>8 Q. I understand that this bill --</p> <p>9 A. It's for the people of Libby primarily.</p> <p>10 Q. Yep, who were exposed to Libby --</p> <p>11 A. And I represented the state of Montana,</p> <p>12 and I can do all I can for the people in the state</p> <p>13 of Montana, including people who have suffered so</p> <p>14 much and have no other remedy, frankly, but for me.</p> <p>15 Q. Understood.</p> <p>16 A. If it were not for me, those people would</p> <p>17 still be suffering.</p> <p>18 Q. Understood.</p> <p>19 In terms of Christine Todd Whitman,</p> <p>20 Kathleen Sebelius, and the others that you mentioned</p> <p>21 earlier in your testimony, is it your understanding</p> <p>22 that they, like you, wanted to make sure that they</p> <p>23 were providing protection from people who are</p> <p>24 suffering from asbestos-related disease due to</p> <p>25 exposure to Libby amphibole?</p>	<p>Page 44</p> <p>1 A. Don't want fraud.</p> <p>2 Q. Yep.</p> <p>3 A. Fraud's not a good thing.</p> <p>4 Q. I think we can all agree --</p> <p>5 A. We don't like fraud.</p> <p>6 Q. -- fraud's not a good thing.</p> <p>7 A. Okay.</p> <p>8 Q. Okay. In terms of this case, you have</p> <p>9 not seen any documents outlining the allegations of</p> <p>10 fraud against the CARD clinic?</p> <p>11 A. No, I have not.</p> <p>12 Q. Okay. Regardless of who is behind a</p> <p>13 scheme to defraud the federal government, you would</p> <p>14 be concerned about the potential of that fraudulent</p> <p>15 activity, fair?</p> <p>16 A. Well, I don't -- I'd be concerned about</p> <p>17 fraud. It would have to be proven.</p> <p>18 Q. Right. And in terms of any of the</p> <p>19 evidence in this case related to fraudulent</p> <p>20 activity, you have not reviewed that evidence?</p> <p>21 A. I am unaware of any fraud. I don't think</p> <p>22 I'd find any either with respect to the CARD clinic.</p> <p>23 I don't think I'd find any either knowing what I do</p> <p>24 about that clinic and Dr. Black and the people</p> <p>25 involved.</p>

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1 Q. And, sir, you say that even though you
2 have not seen any evidence yet in this case.

3 A. That's correct.

4 Q. All right. In terms of the opinions and
5 the testimony that you plan to offer at trial, do
6 you plan to offer any opinions or testimony about
7 CARD's character or Dr. Black's character?

8 A. Not at this point, but I'll reserve on
9 that.

10 Q. All right.

11 A. Not -- not to this point. If it gets to
12 be more serious, I might look at it.

13 Q. Okay.

14 A. Because I feel so strongly about helping
15 the people in Libby and about this -- about the
16 outcome of this case.

17 Q. Senator Baucus, at one point, in terms of
18 this congressional testimony, you made a statement
19 about --

20 A. Is it in 5? This is 5 right here.

21 Q. Yep. I'll let you know in just a sec,
22 sir.

23 You made a statement about doctors across
24 the country who didn't know about asbestos-related
25 disease.

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1 Montana. It took a long time to get their
2 attention. We finally got some doctors to say this
3 stuff in Libby is wicked stuff. That is why,
4 frankly, EPA has started to understand how bad this
5 really is."

6 Did I read that correctly?

7 A. You did.

8 Q. Okay.

9 MR. BECHTOLD: Almost. Almost.

10 MR. DUERK: Did I miss something? Oh, "this really
11 is." Is that what you're referring to?

12 THE WITNESS: "How bad this really is."

13 Q. (By Mr. Duerk) Yeah, sorry, I did say
14 "that."

15 Sir, in terms of this part of what you
16 said in front of the Senate, I'd like to focus on
17 the doctors that you spoke to nationally about
18 asbestos-related disease as a result of Libby
19 tremolite asbestos. Do you recall any of the
20 pulmonologists or radiologists that you spoke with
21 nationally?

22 A. Well, I do recall this phenomenon.

23 Q. Okay.

24 A. And it is -- to my recollection, it's
25 true that the disease of Libby tremolite is sort of

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1 A. Where is that?

2 Q. That would be --

3 A. Do you want No. 5?

4 Q. I'm trying to see if I have Exhibit 5 in
5 front of me.

6 A. I have 5 here. Do you want 5?

7 Q. Do you see page 9 on the lower right-hand
8 corner here?

9 A. I do.

10 Q. All right. Do you see the sentence that
11 begins with "Let me refine that point"?

12 A. Yeah, I do.

13 Q. All right. And, sir, just for the
14 record, I believe this is part of your statement in
15 front of the Senate. I'd like to read this
16 paragraph. Please follow along with me and tell me
17 if I've read it accurately, okay?

18 A. Okay.

19 Q. "Let me refine that point. For a long
20 time, we have been talking to lung specialists
21 across the country about the Libby tremolite
22 asbestos, and we got just so-so responses about how
23 dangerous it was. Why? Because virtually none of
24 those doctors had experience dealing with the
25 pernicious kind of asbestos we have seen in Libby,

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1 special and more wicked and more difficult and more
2 pernicious than other forms of asbestos --
3 asbestos-related diseases in other parts of the
4 country.

5 And I also recall that it took some time
6 educating doctors on all this. But it's also
7 important to know that I had great staff. My staff
8 talked to those doctors.

9 Q. Oh, okay.

10 A. I haven't -- I did not personally.

11 Q. All right.

12 A. But, you know, when you run a Senate
13 office, you can't do everything.

14 Q. Understood.

15 A. You've got to delegate some stuff. What
16 you do, you hire the very best people you can get.
17 And I had the best people. I'll tell you, you talk
18 to people in Washington, D.C., they'll tell you I
19 had the best staff there, and I think I did. We all
20 worked hard. We cared. We wanted to work primarily
21 with the state on the issues.

22 But the head of my health care team is a
23 lady named Liz Fowler. I'm sure she and her
24 people -- I know how hard they worked -- talked to
25 lots of people including doctors, including relevant

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1 doctors. I did not personally. I'm quite confident
 2 they did.

3 Q. Okay. But in terms of personal
 4 conversations that you had with any doctors about
 5 Libby amphibole and asbestos-related disease
 6 resulting from Libby, fair to say that the only
 7 doctor that you can recall conversations with, that
 8 you had personally, were conversations with
 9 Dr. Charles Brad Black, correct?

10 A. No, there's Black and there's -- who's
 11 the guy in Spokane?

12 Q. Dr. Whitehouse.

13 A. Whitehouse.

14 Q. Okay.

15 A. He's another one. There's another doctor
 16 I talked to down in Texas. I called him up to
 17 recruit him to come to Montana. Holden or
 18 something, I've forgotten his name.

19 Q. Okay.

20 A. And he came up, and he actually spent
 21 some time in Libby, but some time in Missoula. So
 22 there -- those are three.

23 Q. Let me see if you've spoken with any of
 24 the following doctors. Have you ever spoken with
 25 any of the local radiologists or local

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1 Q. Did you ever speak with Dr. Steven Haber?

2 A. Not to my recollection.

3 Q. Do you recall --

4 A. I could have, though.

5 Q. That's okay.

6 A. It's very possible.

7 Q. That's okay.

8 Do you recall ever speaking with a
 9 Dr. Heppe?

10 A. Nope.

11 Q. Do you recall speaking with any of the
 12 local radiologists based either in Libby or
 13 Kalispell, Montana about what they were and weren't
 14 seeing with patients alleged to have
 15 asbestos-related disease in Libby?

16 A. I've already covered that.

17 Q. Okay.

18 A. But my staff -- don't forget -- my staff
 19 worked day and night talking to all the relevant
 20 people, and I know they talked to a lot of doctors.
 21 Q. And from conversations with your staff
 22 and the conversations that you had with Dr. Black,
 23 is that primarily the source of your understanding
 24 that's consistent with your words in front of the
 25 Senate, "We've been talking to lung specialists

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1 pulmonologists in the Libby area who diagnosed and
 2 treated asbestos-related disease in Northwestern
 3 Montana?

4 A. I talked -- I talked to somebody in
 5 Kalispell. I forgot who it was.

6 Q. Do you recall ever speaking with
 7 Dr. Steven Becker?

8 A. Is he in Kalispell?

9 Q. He is not.

10 A. Steven Becker, I don't -- not to the best
 11 of my recollection.

12 Q. Do you recall ever speaking with
 13 Dr. dal Nogare?

14 A. You're pulling all these names out, and,
 15 I mean, it's a long time ago.

16 Q. All right. Sir --

17 A. I might just -- I mean, if someone could
 18 remind me of that person's name, I might associate
 19 the name with the conversation --

20 Q. Sure.

21 A. -- but right now, I don't.

22 Q. That's okay.

23 Do you recall speaking with pulmonologist
 24 Tim Obermiller?

25 A. Not to my recollection.

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1 across the country about the Libby tremolite
 2 asbestos, and we got just so-so responses about how
 3 dangerous it was?"

4 A. Yep, that's fair.

5 Q. Okay. And --

6 A. Again, I want to emphasize, I cannot
 7 personally talk to everybody.

8 Q. Understood. And, sir, my point --

9 A. That's why I hire good people.

10 Q. Understood. During your deposition
 11 today, I'm trying to figure out the basis of your
 12 opinions.

13 A. I'm telling you that they're good staff.

14 Q. And I -- I hear you that you were relying
 15 on your staff, but without identifying the source of

16 this information that Dr. Black and CARD were
 17 correct in their determinations about whether Libby
 18 amphibole disease existed, without knowing who the
 19 other doctors were, it's just difficult for me to

20 form a complete picture. Is that -- do you
 21 understand?

22 A. Maybe difficult for you, not for me.

23 Q. All right. Sir, in terms of the doctors
 24 that you spoke with or your staff spoke with about
 25 Libby asbestos, do you recall speaking with any of

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1 the doctors from Mount Sinai?
 2 A. I don't, but let me say this: Nobody
 3 that I or we talked to disputed the general
 4 statement that we just read.
 5 Q. All right.
 6 A. Nobody's disputed it.
 7 Q. Okay.
 8 A. It's accurate. There's no question that
 9 statement is accurate.
 10 Q. All right. In terms of Dr. Black's
 11 credentials, are you aware of whether Dr. Black is
 12 board-certified in any particular field of medicine?
 13 A. Well, he sure became the nation's expert
 14 on asbestos with all the time that he spent on it.
 15 Q. All right. Are you aware of his
 16 credential?
 17 A. Well, he's a pediatrician, wasn't he?
 18 But, my god, he spent a -- his whole life on this,
 19 the problem in Libby. Yeah, he's a -- he's good.
 20 He's a doctor.
 21 Q. In terms of Dr. Black's diagnosis rate,
 22 are you aware of any facts about Dr. Black's
 23 diagnosis rate compared to radiologists and
 24 pulmonologists looking at the same patient?
 25 A. I have no knowledge of any of that.

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1 past?
 2 A. What's -- what -- again, what data?
 3 Q. Data related to the incidence of fraud in
 4 asbestos litigation.
 5 A. Oh, fraud, no, no.
 6 Q. Okay. Have you sat through any Senate
 7 hearings or any committee hearings or any committee
 8 discussions about the topic of fraud in asbestos
 9 litigation?
 10 A. No. Fraud in Medicare and other areas,
 11 but not in asbestos.
 12 Q. Have you sat through any meetings as part
 13 of your professional responsibilities related to
 14 fraud in asbestos litigation that's focused on the
 15 topic of a high-diagnostic differential?
 16 A. I don't know. Nope.
 17 Q. Have you sat through any meetings or read
 18 any materials in terms of your professional
 19 responsibilities related to the involvement of
 20 plaintiffs' lawyers hiring doctors to inflate
 21 diagnosis rates?
 22 A. Nope, never. It may happen. I'm unaware
 23 of it.
 24 Q. Have you sat through any testimony or
 25 read any materials in your professional duties

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1 Q. All right. In terms of Dr. Black's
 2 methodology, are you aware of any facts related to
 3 the way in which Dr. Black diagnoses patients?
 4 A. I have full faith in him.
 5 Q. I understand that. My question is, do
 6 you know what he does to get at a diagnosis?
 7 A. I don't -- I don't sit in his lap, and I
 8 don't stand next to him. I don't go -- it's
 9 impossible for me to know that question. I just
 10 don't know.
 11 Q. All right. You don't know his
 12 methodology in terms of diagnosing patients; is that
 13 fair?
 14 A. That's fair. I just -- I just trust him
 15 because I have heard no evidence to the contrary.
 16 Q. I'm aware of that fact in particular.
 17 So --
 18 A. Which happened to be true. It's
 19 something that you should be aware of.
 20 Q. Senator Baucus, are you aware of the --
 21 the data related to fraud in asbestos litigation
 22 nationally?
 23 A. Nope.
 24 Q. Okay. Are you aware that that has been a
 25 topic of discussion in front of the Senate in the

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1 related to a solitary doctor or a small group of
 2 doctors vastly overdiagnosing asbestos-related
 3 disease when outside objective reads show no
 4 evidence of disease?
 5 A. Nope.
 6 Q. During any part of your professional
 7 responsibilities or duties, have you heard testimony
 8 or read any reports about either millions or
 9 billions of taxpayer dollars wasted as a result of
 10 false claims for patients who are not sick?
 11 A. No, I'm not. It could be down in
 12 Florida, but not in Montana.
 13 MR. DUERK: Sir, if we could take a five-minute
 14 break, I'll gather some of my notes and try and speed this
 15 along.
 16 VIDEO OPERATOR: We are going off the record. The
 17 time is 11:18 a.m.
 18
 19 (Whereupon, a recess was taken)
 20
 21 VIDEO OPERATOR: We are back on the record. The time
 22 is 11:25 a.m.
 23 Q. (By Mr. Duerk) Senator, we just took a
 24 short break. I just want to cover a couple of just
 25 general topics.

<p>Page 57</p> <p>1 A. Sure.</p> <p>2 Q. In -- in terms of Medicare eligibility, I 3 want to go through a hypothetical with you and get 4 your thoughts, okay?</p> <p>5 The hypothetical is this: Let's say an 6 individual who lives in Libby, Montana, goes to a 7 doctor and gets screened for asbestos-related 8 disease and that patient has an abnormality because 9 of a rib fracture that would appear on a chest 10 x-ray.</p> <p>11 As part of the screening program, that 12 patient's chest x-ray and CT scan is sent out to a 13 panel of experts, and they identify that there's a 14 rib fracture there.</p> <p>15 Those x-rays and CT's come back to the 16 diagnosing physician who reviews the CT scan and the 17 chest x-ray, and they sit down with the patient 18 after conducting an exposure history and a physical 19 exam, and they look at the CT scan and they say, 20 "You have a fractured rib, but you do not have a 21 diagnosis of asbestos-related disease."</p> <p>22 Does that all make sense so far in terms 23 of the hypothetical? We've got a patient with no 24 diagnosis of asbestos-related disease.</p> <p>25 In your mind, would it be proper for that</p>	<p>Page 59</p> <p>1 A. Without a diagnosis, that's correct.</p> <p>2 Q. Okay. Doctor, in terms of your 3 background training and experience, and I think 4 these questions are all going to be real basic, but 5 you don't hold yourself out as a physician, correct?</p> <p>6 A. No, I don't.</p> <p>7 Q. Didn't go to medical school?</p> <p>8 A. I did not.</p> <p>9 Q. All right. Don't claim to know or 10 understand the intricacies of what's required for a 11 diagnosis of asbestos-related disease under the 12 American Thoracic Society standard?</p> <p>13 A. That's correct. It's not my deal.</p> <p>14 Q. All right. So if CARD physicians have 15 admitted under oath that B Readers, just 16 radiologists who only look at a film, do not 17 diagnose, you wouldn't have a reason to disagree 18 with that?</p> <p>19 A. Again, if there's no diagnosis, that 20 person should not get -- should not be covered.</p> <p>21 Q. Okay. And on the very narrow and 22 specific question, I think I might anchor this to 23 undisputed facts if we need to, but would you 24 dispute that radiologists, those doctors who just 25 look at films, are not responsible for diagnosing a</p>
<p>Page 58</p> <p>1 patient to be submitted for Medicare eligibility 2 under the EHH provisions of the Affordable Care Act?</p> <p>3 A. I'd want a second opinion.</p> <p>4 Q. All right.</p> <p>5 A. I think, my gosh, I've gone to a lot of 6 the doctors in my life, and sometimes it's better to 7 go see another one.</p> <p>8 Q. All right. Well, within the context of 9 this hypothetical, let's say that the doctor with 10 the most information, the diagnosing physician, the 11 doctor who has the CT scan and the chest x-ray, the 12 doctor who's completed an inpatient assessment, the 13 doctor who's reviewed the exposure history of the 14 patient, the diagnosing physician in this instance 15 says, "You're not sick. You don't have 16 asbestos-related disease."</p> <p>17 Based on your understanding of the 18 Affordable Care Act, would it be proper for that 19 patient to be submitted for Medicare benefits?</p> <p>20 A. If the patient does not have disease, the 21 answer is no.</p> <p>22 Q. Right. And so consistent with the 23 original purpose of the EHH provisions in the 24 Affordable Care Act, without a diagnosis, that 25 patient shouldn't be deemed Medicare eligible?</p>	<p>Page 60</p> <p>1 patient?</p> <p>2 MR. BECHTOLD: Foundation.</p> <p>3 THE WITNESS: I was going to say I have no -- I 4 cannot -- I cannot answer that question.</p> <p>5 Q. (By Mr. Duerk) Fair enough.</p> <p>6 A. I have no basis to answer that question.</p> <p>7 Q. Okay. And if we could look at Exhibit 2 8 in front of you. I'm looking at page 13 of 41.</p> <p>9 A. Okay.</p> <p>10 Q. Sir, if I told you that CARD does not 11 dispute the fact that B Readers do not diagnose, 12 would you have any reason to disagree with that?</p> <p>13 A. I -- I'm --</p> <p>14 MR. BECHTOLD: Foundation.</p> <p>15 THE WITNESS: I'm not qualified to answer that 16 question.</p> <p>17 Q. (By Mr. Duerk) All right. Back to the 18 hypothetical of the patient with the rib fracture, 19 if a doctor had submitted Medicare claims for over 20 100 patients knowing that those patients did not 21 have a diagnosis of asbestos-related disease, would 22 you find that problematic?</p> <p>23 A. Yes.</p> <p>24 Q. Why?</p> <p>25 A. Because it would be fraud.</p>

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1 Q. In your mind, why would that scenario
 2 suggest fraud to you?
 3 A. It's inaccurate. Benefits based on false
 4 evidence.
 5 Q. Right. Continuing on with this
 6 hypothetical, if the doctor in that hypothetical
 7 where the patient had the a rib fracture signed a
 8 Medicare claim form stating that that patient had
 9 asbestososis and the date of diagnosis for that
 10 asbestososis in support of the claim for Medicare
 11 eligibility, would you find that fact problematic?
 12 A. Yeah. I don't quite understand the
 13 question. Did the doctor find that there is
 14 asbestos-related disease or not?
 15 Q. No. In this hypothetical, the doctor
 16 determined there was no diagnosis of
 17 asbestos-related --
 18 A. What did the doctor do?
 19 Q. The doctor in this hypothetical submitted
 20 a Medicare claim form that stated the patient had
 21 asbestososis. Would you find that problematic?
 22 A. Yes, I would.
 23 Q. Would you -- in your words, would you
 24 describe that as fraud?
 25 A. I'd have to look at the statute. It --

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1 problematic if, in addition to all those negative
 2 outside readings, that patient went to a local
 3 pulmonologist who, similar to the hypothetical
 4 doctor, had been treating patients for Libby
 5 amphibole disease for years and said to the patient,
 6 "You are not sick. You do not have asbestos-related
 7 disease," and that patient returned to the
 8 hypothetical doctor, and the hypothetical doctor
 9 told the patient, "Ignore that pulmonologist's
 10 second opinion," would you find that problematic?
 11 A. No.
 12 Q. Why not?
 13 A. A lot of doctors are quacks, and I
 14 just -- I just don't know what -- who that
 15 pulmonologist is. I have no idea who he is, so I --
 16 based on what you said, I -- I do not have that
 17 information.
 18 Q. But your statement is a lot of doctors
 19 are quacks.
 20 A. Some are. That's an overstatement. Some
 21 are.
 22 Q. All right. Senator Baucus, in your
 23 opinion are doctors from the Mayo Clinic in
 24 Rochester, Minnesota, doctors that fall into that
 25 quack category?

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1 it certainly is wrong. I'd have to look at the
 2 statute legally. All I know is it's -- it raises --
 3 as I said problematic. It raises questions and
 4 seems wrong, and I'd have to dig into it a lot more
 5 to find out what's going on here.
 6 Q. Understood.
 7 Let's go into a separate hypothetical.
 8 Assume there's the same doctor who sees a patient
 9 and that patient had some experience in Libby,
 10 Montana, so that they were in Libby for the
 11 requisite period of time, and the doctor sent that
 12 patient's x-rays and CT scans out for a read from
 13 either a B Reader or a thoracic radiologist, a
 14 pulmonologist, someone with experience reading
 15 films, and all of those films, all of those chest
 16 x-rays came back as negative for asbestos-related
 17 disease, not just once but multiple times year after
 18 year, assuming there was no outside evidence
 19 according to radiologists and outside experts
 20 showing any signs consistent with asbestos-related
 21 disease, would you find it problematic if that
 22 doctor submitted that patient for Medicare benefits?
 23 A. Yeah. If there's no basis for finding
 24 disease, yeah.
 25 Q. Same hypothetical: Would you find it

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1 A. No.
 2 Q. Generally no, fair?
 3 A. Fair.
 4 Q. Okay. Same hypothetical: Let's assume
 5 that patient, frustrated with the different opinions
 6 he's hearing about his disease --
 7 A. Right.
 8 Q. -- takes a trip to Rochester.
 9 A. Right.
 10 Q. And he remains there for several days,
 11 and he has his films over-read by radiologists, and
 12 he has an in-person physical examination, and he
 13 goes through a battery of tests.
 14 A. Right.
 15 Q. Let's assume that that patient is told by
 16 the doctors at Mayo, "You have no signs of
 17 asbestos-related disease. In fact, we over-read all
 18 of your scans going back for years, and none of them
 19 show any signs consistent with asbestos-related
 20 disease." Would it concern you if the hypothetical
 21 doctor still maintained and told that patient, "You
 22 have asbestos-related disease despite what all of
 23 these other doctors are saying"?

24 A. I'd be concerned.
 25 Q. I would like to expand the hypothetical

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1 just one step further. Let's think about this
 2 hypothetical doctor. And let's assume that this
 3 doctor has the same experience with this
 4 hypothetical patient who has gotten second opinions
 5 and has had his radiographic scans over-read year to
 6 year to year to year. Let's assume that this doctor
 7 is aware that the Mayo Clinic and other
 8 pulmonologists, expert B Readers who look at all of
 9 these films are consistently over-reading the
 10 hypothetical doctor's interpretations and telling
 11 this doctor, "These patients do not have any sign of
 12 disease. These patients are not sick." Assume this
 13 has been going on for a decade.

14 Would it concern you if, after time, the
 15 hypothetical doctor who is submitting these people
 16 for Medicare decides not to even look at the scans
 17 that the expert outside thoracic radiologists are
 18 returning to him telling him these patients aren't
 19 sick. Would that concern you?

20 A. That's awfully complicated. I'm having a
 21 hard time. There's so many hypotheticals there.
 22 It's just -- I like to deal with real facts, not
 23 with hypotheticals.

24 Q. All right. There are a lot of variables,
 25 but assume that this hypothetical doctor for over a

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1 A. No.
 2 Q. In terms of the diagnosis criteria that's
 3 used at the CARD clinic, do you have any knowledge
 4 of what criteria the CARD clinic uses in diagnosing
 5 patients?

6 A. No. I generally trust doctors until they
 7 raise -- until questions are raised that cause
 8 concern. That's not happened in the case of
 9 Dr. Black.

10 Q. All right. It hasn't happened to date,
 11 correct?

12 A. What's today? The 19th?

13 Q. Yes.

14 A. Correct.

15 Q. As of the 19th of July, you have still
 16 not read the complaint in this case?

17 A. No, I have not.

18 MR. BECHTOLD: Asked and answered, third time.

19 Q. (By Mr. Duerk) Doctor, the last time
 20 that you had any interaction with Dr. Black --

21 A. Is it better to be a doctor or a Senator?

22 Q. I apologize. Senator Baucus.

23 A. I don't care.

24 Q. I apologize. Senator Baucus, the last
 25 time that you had any communication with Dr. Black,

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1 decade was told hundreds and hundreds and hundreds
 2 of times --

3 A. By?

4 Q. By thoracic radiologists, by outside
 5 physicians that his patients weren't sick and he
 6 wasn't listening, would that concern you?

7 A. Yes.

8 MR. BECHTOLD: So we're no longer dealing with just
 9 the guy who went to Rochester?

10 MR. DUERK: We're dealing with hundreds of patients.

11 MR. BECHTOLD: Okay.

12 Q. (By Mr. Duerk) Doc -- I almost called
 13 you doctor. Senator --

14 A. You did earlier already.

15 Q. If I have -- there have been so many
 16 doctors in this case, I apologize.

17 Senator, when it comes to any Medicare
 18 claim forms, any EHH forms -- I'm not trying to
 19 ambush you or issue you a trick question, but do you
 20 know what an EHH form is?

21 A. No.

22 Q. In terms of any witnesses or potential
 23 witness in this case outside of Dr. Black, have you
 24 spoken with any of the employees, managers, or
 25 directors at the CARD clinic?

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1 was that in person or over the phone?

2 A. Over the phone. Let me see, over the
 3 phone.

4 Q. Over the phone.

5 Can you recall, just ballpark the last
 6 time that you saw Dr. Black in person?

7 A. I guess when -- the dedication of the
 8 clinic. There was a big ceremony up in Libby when
 9 an extension of the building was completed.

10 Q. And it's often difficult for me to put
 11 events like that on a timeline, but was that three
 12 years ago, five years ago?

13 A. More than that. I'd say six, seven --
 14 maybe -- three, five, I'd say eight. More than
 15 that. More than that.

16 Q. So fair to say somewhere in the
 17 seven-to-10-year range?

18 A. I'd say 10.

19 Q. 10 years?

20 A. Roughly.

21 Q. Aside from that visit, have you been to
 22 the CARD clinic since?

23 A. No.

24 Q. When you saw Dr. Black, the last time
 25 that you saw him in person, how did he appear to

<p>Page 69</p> <p>1 you?</p> <p>2 A. Great.</p> <p>3 Q. Great. What -- what do you recall?</p> <p>4 A. Dr. Black, upbeat, positive, smart,</p> <p>5 engaging.</p> <p>6 Q. Energetic?</p> <p>7 A. Energetic, yeah.</p> <p>8 Q. Did he appear to be in good physical</p> <p>9 health to you?</p> <p>10 A. Yes, he did.</p> <p>11 Q. Have you had any discussions with any of</p> <p>12 the expert witnesses in this case who have been</p> <p>13 disclosed by CARD?</p> <p>14 A. No.</p> <p>15 Q. Do you know who the other experts are?</p> <p>16 A. I do not.</p> <p>17 Q. Okay. In terms of the testimony that you</p> <p>18 would offer at trial in this matter, would that</p> <p>19 testimony be limited to your personal experience</p> <p>20 with CARD and its members?</p> <p>21 A. I don't know. Depends what I'm asked.</p> <p>22 Q. All right. In terms of your expert</p> <p>23 witness disclosure, do you recall reviewing this</p> <p>24 before it went out?</p> <p>25 A. What's that?</p>	<p>Page 71</p> <p>1 Congressional Record itself?</p> <p>2 A. A lot does.</p> <p>3 Q. And just so I'm clear here, sometimes</p> <p>4 lawyers make arguments about what's included in</p> <p>5 legislative history. In terms of legislative</p> <p>6 history itself, would you agree that when you were</p> <p>7 in the Senate you were one member of a deliberative</p> <p>8 body that included many points of view?</p> <p>9 A. Correct.</p> <p>10 Q. In terms of the legislative history of a</p> <p>11 bill, would you agree that that legislative history</p> <p>12 is captured in the written record, in this instance</p> <p>13 the Congressional Record related to passage of the</p> <p>14 Affordable Care Act?</p> <p>15 A. That's relevant, but there probably are</p> <p>16 other revisions to it that can be in the category of</p> <p>17 legislative history. That's part of it.</p> <p>18 Q. And what other parts or what other</p> <p>19 information would you --</p> <p>20 A. It would be committee hearings.</p> <p>21 Q. Right.</p> <p>22 A. Committees.</p> <p>23 Q. So the committee hearings and the records</p> <p>24 of the committee hearings would also be relevant in</p> <p>25 your mind for --</p>
<p>Page 70</p> <p>1 Q. Exhibit 4, third page.</p> <p>2 A. No.</p> <p>3 Q. All right. Do you recall reviewing</p> <p>4 anything like that or discussing the contents of</p> <p>5 what would be included in your expert disclosure?</p> <p>6 A. No. I just -- I put that provision in</p> <p>7 the statute because I believed in it, and I'm more</p> <p>8 than happy to testify that -- as to the reasons why</p> <p>9 I put that in.</p> <p>10 Q. Okay. And in terms of any inquiry about</p> <p>11 CARD's diagnostic methodology or practices related</p> <p>12 to submitting claims for Medicare benefits, that is</p> <p>13 not any type of inquiry you have made?</p> <p>14 A. Inquiry where?</p> <p>15 Q. About CARD's diagnostic methodology or</p> <p>16 CARD's practices --</p> <p>17 A. No, no, no.</p> <p>18 Q. -- of submitting Medicare forms?</p> <p>19 A. No, no.</p> <p>20 Q. All right. Can we agree that on both of</p> <p>21 those topics you do not have any information?</p> <p>22 A. Correct.</p> <p>23 Q. Sir, in terms of testifying about the</p> <p>24 Affordable Care Act, would you agree with me that</p> <p>25 information about legislative history comes from the</p>	<p>Page 72</p> <p>1 A. Oh, there could be letters. There could</p> <p>2 be lots of stuff.</p> <p>3 Q. All right.</p> <p>4 A. Not just the record. The record is very</p> <p>5 important.</p> <p>6 Q. Right. Understood.</p> <p>7 I think what I'm trying to get to is,</p> <p>8 I've seen the -- what I'll represent to you is the</p> <p>9 legislative history in this case in terms of the</p> <p>10 hearings, the committee hearings, and the material</p> <p>11 submitted at those hearings.</p> <p>12 Is that the type of information that</p> <p>13 you're talking about that would be considered</p> <p>14 relevant for purposes of determining legislative</p> <p>15 history?</p> <p>16 A. Relevant, but not determinative.</p> <p>17 Q. Understood. And what would be</p> <p>18 determinative?</p> <p>19 A. Well, certainly more relevance as to what</p> <p>20 the senators from those states think. We're talking</p> <p>21 about Libby here. Senator, you know, of Louisiana</p> <p>22 doesn't care that much, but the Senators of the</p> <p>23 state of Montana do.</p> <p>24 Q. Understood.</p> <p>25 A. So...</p>

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1 Q. But in terms of what's passed into law,
 2 the law is what's determinative of how this
 3 legislation is enforced?
 4 A. Senators vote for all kinds of reasons.
 5 It's hard to tell.
 6 Q. All right. When we enforce the criminal
 7 code, for example, or when we enforce the Affordable
 8 Care Act and determine how the Affordable Care Act
 9 should govern all of us, the first place we look is
 10 the law itself?
 11 A. Right.
 12 Q. Not necessarily legislative history?
 13 A. Correct.
 14 Q. Okay. And when we look to legislative
 15 history, is it fair to say we look at the printed
 16 record of your deliberations?
 17 A. Yeah.
 18 Q. Okay. In terms of your declaration in
 19 Exhibit 1, I think we've probably covered this at
 20 length, but in terms of the opinions that you intend
 21 to share at trial in this matter, is it your opinion
 22 that in order to be Medicare eligible a patient must
 23 have a diagnosis of asbestos-related disease?
 24 A. It helps.
 25 Q. It helps?

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1 A. Generally that's correct.
 2 Q. Okay. And again, is there any exception
 3 that you can think of here?
 4 A. No.
 5 Q. All right. So --
 6 A. But things are generally not black and
 7 white. I mean, someone may say, "That person is not
 8 qualified. That person" -- some other doctor may
 9 say, "Yes, he is qualified."
 10 Q. Sure.
 11 A. So I mean, it's -- there are shades of
 12 gray here.
 13 Q. Understood. But in terms of --
 14 A. The principle, we're talking about the
 15 principle.
 16 Q. And in terms of the language of the law.
 17 A. The language of the law, that's correct.
 18 Q. If a patient doesn't have a diagnosis --
 19 A. Correct.
 20 Q. -- of asbestos-related disease from Libby
 21 amphibole, they should not be Medicare eligible?
 22 A. Correct.
 23 MR. DUERK: Sir, I would like to take a few minutes
 24 to review my notes once more to make sure I'm not missing
 25 anything, and then I anticipate we may be through with my

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1 A. It helps.
 2 Q. All right. Is a diagnosis required under
 3 the Affordable Care Act?
 4 A. Under the law, yes.
 5 Q. Okay.
 6 A. But CMS may reject a claim. I mean, CMS
 7 may reject, and there are all kinds of steps here.
 8 Q. All right. And then --
 9 A. But for the purposes of this discussion,
 10 though, it's my intention that -- and I think it's
 11 the intention of the statute -- that if you got a
 12 diagnosis, you're covered; if there's no diagnosis,
 13 you're not covered.
 14 Q. Right.
 15 A. It's very simple.
 16 Q. And in terms of the law itself, as we've
 17 covered earlier, there's no provision stated in the
 18 Affordable Care Act, the EHH provisions, that
 19 creates an exception for a patient to be eligible
 20 for Medicare benefits without a diagnosis.
 21 A. There must be a diagnosis.
 22 Q. And if a patient does not have a
 23 diagnosis of asbestos-related disease, if a patient
 24 is not sick from Libby amphibole, they should not be
 25 submitted for Medicare benefits?

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1 part. Thank you.
 2 VIDEO OPERATOR: We are going off the record. The
 3 time is 11:52 a.m.
 4
 5 (Whereupon, a recess was taken)
 6
 7 VIDEO OPERATOR: We are back on the record. The time
 8 is 12:04 p.m.
 9 Q. (By Mr. Duerk) Senator Baucus, during
 10 your deposition today, it's appeared to me that
 11 you've understood my questions. When you've needed
 12 clarification, you've asked for that clarification.
 13 Has that been your impression also?
 14 A. Yes.
 15 Q. Sir, I thank you for your time.
 16 Do you anticipate serving as a witness at
 17 trial in this matter?
 18 A. Yes.
 19 MR. DUERK: Okay. I have nothing further. Thank
 20 you, sir.
 21 MR. BECHTOLD: And I'll reserve --
 22 THE WITNESS: Sorry?
 23 MR. BECHTOLD: I'll reserve any questions for trial.
 24 THE WITNESS: Okay.
 25 VIDEO OPERATOR: That concludes the deposition. The

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1 time is 12:04 p.m.
 2
 3 (Whereupon, the deposition concluded at
 4 12:04 p.m. for the day)
 5
 6 (Signature reserved)

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1 C E R T I F I C A T E
 2
 3 STATE OF MONTANA)
 4 :ss
 5 COUNTY OF BEAVERHEAD)
 6 I, Robyn Ori English, Freelance Court Reporter and
 7 Notary Public for the State of Montana, residing in
 Dillon, do hereby certify:
 8 That I was duly authorized to and did swear in the
 9 witness and report the deposition of Senator Max Baucus,
 10 in the above-entitled cause; that the foregoing pages of
 11 this deposition constitute a true and accurate
 12 transcription of my stenotype notes of the testimony of
 13 said witness, all done to the best of my skill and
 14 ability; that the reading and signing of the deposition by
 15 the witness has been expressly reserved.

16 I further certify that I am not an attorney nor
 17 counsel of any of the parties, nor a relative or employee
 18 of any attorney or counsel connected with the action, nor
 19 financially interested in the action.

20 IN WITNESS WHEREOF, I have hereunto set my hand and
 21 affixed by notarial seal on this, the 26th day of July,
 22 2022.

23
24
25

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1 DEPONENT'S CERTIFICATE
 2
 3 I, Senator Max Baucus, Deponent in the foregoing
 4 deposition, DO HEREBY CERTIFY, that I have read the
 5 foregoing pages of typewritten material and that the same
 6 is, with any changes thereon made in ink on the correction
 7 sheet and signed by me, a full, true and correct
 8 transcript of my oral deposition given at the time and
 9 place hereinbefore mentioned.

10
11

12 Senator Max Baucus, Witness
 13
14
15

16 SUBSCRIBED AND SWORN to before me this
 17 day of , 20___.
 18
19

20 NOTARY PUBLIC
 21 Residing at
 My Commission Expires
 22
23

24 ROE - BNSF v. CARD
 25

Rough Draft

*BNSF Railway Company v
The Center For Asbestos Related Disease, Inc.*

*Senator Max Baucus
May 25, 2023*

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Min-U-Script® with Word Index

Senator Max Baucus

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF MONTANA 3 4 BNSF RAILWAY COMPANY, on behalf of 5 THE UNITED STATES OF AMERICA, 6 7 Plaintiff, 8 9 vs. Cause No. CV-19-40-M-DLC 10 11 THE CENTER FOR ASBESTOS RELATED 12 DISEASE, INC., 13 14 Defendant. 15 16 VIDEO DEPOSITION UPON ORAL EXAMINATION OF 17 SENATOR MAX BAUCUS 18 19 BE IT REMEMBERED, that the video-taped deposition 20 upon oral examination of SENATOR MAX BAUCUS, appearing at 21 the instance of the Defendant, was taken at 224 E. Main, 22 Bozeman, Montana, on May 25, 2023, beginning at 10:00 23 a.m., pursuant to Montana Rules of Civil Procedure, before 24 Robyn Ori English, Court Reporter - Notary Public. 25</p>	<p>Page 1</p>	<p>1 VIDEO OPERATOR: This is the video-recorded subpoena 2 of Max Baucus, taken in the United States District Court 3 for the District of Montana, Civil Action No. 19-40-M-DLC, 4 BNSF versus CARD. 5 Today is May 25th, 2023. The time is 10:09 a.m. 6 We are present with the witness at 224 East Main Street, 7 in Bozeman, Montana. The Court Reporter is Robyn Ori 8 English, and the video operator is Nate Trejo with Fisher 9 Court Reporting. 10 The deposition is being taken pursuant to 11 Notice. I would now ask the attorneys to identify 12 themselves, who they represent, and whoever else is 13 present. 14 MR. DUERK: Adam Duerk for Relator BNSF. 15 MR. BECHTOLD: And I'm Tim Bechtold representing the 16 CARD Clinic. 17 VIDEO OPERATOR: The Court Reporter will now 18 administer the oath. 19 WHEREUPON, the following proceedings were had and 20 testimony taken, to wit. 21 22 23 MAX BAUCUS, 24 called as a witness herein, having been first duly sworn, 25 was examined and testified as follows:</p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 2</p>	<p>Page 4</p>

Senator Max Baucus

Page 5	Page 7
<p>1 '78 -- '79 -- I mean, '78 to 2014. And I 2 represented the United States of America in China as 3 U.S. Ambassador to China in 2013 to '17. And then 4 -- since then, I've been self-employed.</p>	<p>1 who is very, very adamant and active in making sure 2 that people of Libby got justice. 3 And I remember sitting in Gayla's living 4 room talking to a group there, and Les Skramstad -- 5 he explained the problems. And I said to Les, "Les, 6 I will do whatever it takes to bring justice to the 7 people of Libby, Montana." And he looked me 8 straight in the eye and pointed his finger at me and 9 said, "Well, Senator, many people have said they're 10 going to be helping and I'll be watching."</p>
<p>10 A. It seemed like an infinite number. Many. 11 No question, many.</p>	<p>11 And I thought to myself immediately, he 12 didn't have to watch because I'm going to do 13 whatever it took to bring justice to the people of 14 Libby.</p>
<p>14 Q. Is it fair to say that you're familiar 15 with the drafting and passage of laws in Congress?</p>	<p>15 And so a major action was to include in 16 the Affordable Care Act a provision which would give 17 Medicare coverage to the people who were diagnosed 18 with the asbestos-related disease if Libby was 19 declared a national healthcare emergency. So I put 20 that provision in the bill to make sure that Libby 21 people that have asbestos get coverage so long as 22 the designation is made and actually a national 23 healthcare emergency designation.</p>
<p>23 Two main purposes, one of which was 24 accomplished, was to give greater coverage to 25 Americans. A lot of Americans didn't have any</p>	<p>24 And, frankly, I tried two or three times 25 to get different administrations to invoke that</p>
Page 6	Page 8
<p>1 health insurance, about 40 million at that time, as 2 I recall.</p>	<p>1 declaration, and finally we were able in the Obama 2 administration to get that designation through then 3 Secretary Sebelius who was secretary of HHS.</p>
<p>3 The other was to -- goal was to cut 4 costs, because the healthcare cost was so expensive.</p>	<p>4 And so I got familiar with that part of 5 the Affordable Care Act, and, frankly, many parts of 6 the Affordable Care Act because I spent two or three 7 years on that act to try to get it passed.</p>
<p>5 But, at the same time, I was very 6 involved specifically with the problems that people 7 in Libby were having with asbestos-related diseases. 8 I spent a lot of time in Libby, visited Libby many, 9 many times on that issue; my staff maybe over ten 10 times on that issue. It's what you do to help Libby 11 receive justice because of all the asbestos-related 12 illnesses and diseases in Libby.</p>	<p>8 Q. Max, I'd like to draw your attention to 9 tab 3, Exhibit 112, and then to page 9 of that 10 exhibit. So if you look at the bottom right hand 11 corner, there's numbers.</p>
<p>13 And so I thought I wanted to do something 14 to help Libby. Libby was not, in my judgment, 15 getting sufficient help in a lot of areas; one was 16 Superfund and asbestos on the playgrounds. It's 17 just -- in the town of Libby and annex. It was -- 18 the mine, it was just stunning to see these guys 19 come off the mine just caked with vermiculite. It 20 was just awful.</p>	<p>12 A. Okay. Yeah. 13 Q. I guess it starts -- let's start at -- it 14 actually starts at page 6.</p>
<p>21 And at the same time, I met a lot of 22 people in Libby who were dying because of 23 asbestos-related diseases. One in particular, a 24 fell a named Les Skramstad, and I spent some time 25 with Les. And Gayla Benefield is another lady there</p>	<p>15 A. Okay, yeah. 16 Q. Could you tell the jury what you're 17 looking at? 18 A. Yeah, this looks like a portion of the 19 Congressional Record. I was speaking about this 20 provision about the people of Libby. If you want, I 21 can read parts, but that's what this is. 22 Q. Okay. And why did you make that 23 statement in the Congressional Record? 24 A. Because I wanted the law to pass and I 25 wanted members of Congress, in this case USA, to</p>

Senator Max Baucus

<p style="text-align: right;">Page 9</p> <p>1 understand the reasons to putting this provision in 2 the bill. And it outlined -- this portion here 3 outlines the basic provisions of the bill that are 4 relevant to Libby.</p> <p>5 Q. And, Max, I'd like you now to go to tab 7 6 in the exhibits, Exhibit 305.</p> <p>7 A. All right.</p> <p>8 Q. And I would like you to turn to the fifth 9 page of that exhibit. Could you tell the jury what 10 that exhibit is?</p> <p>11 A. Well, this is basically an outline of the 12 Affordable Care Act. Well, there are various 13 outlines, provisions, sections of the bill, and the 14 whole bill is not here, but the bill is over 800 15 pages.</p> <p>16 Q. Right. So what I'd like you to look at 17 is Section 1881A.</p> <p>18 A. 1881A.</p> <p>19 Q. And then if you go to Section 81A, sub e.</p> <p>20 A. Yeah, I see that.</p> <p>21 Q. Okay. And could you tell the jury what 22 -- who environmental exposure affected individuals 23 is defined as?</p> <p>24 A. Well, the statute says, In general, a 25 person's covered who is diagnosed with one or more</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. And when did you provide that 2 declaration?</p> <p>3 A. Well, it's dated February 2002 -- 2022, a 4 while ago. Last year.</p> <p>5 Q. And I understand that this declaration 6 was prepared by your staff working with other 7 people?</p> <p>8 A. Yeah, right. Yeah, this is my 9 declaration.</p> <p>10 Q. And why did you give this declaration?</p> <p>11 A. First of all, because it's part of this 12 procedure, and second, I wanted to declare why I put 13 these provisions in the Affordable Care Act and what 14 they basically provide.</p> <p>15 Q. Okay.</p> <p>16 A. The purpose was to make sure the people 17 in Libby, Montana with asbestos-related disease are 18 covered under the Medicare so long as if the 19 declaration is approved by the secretary, and that 20 is the case here.</p> <p>21 Q. So if you look at paragraph No. 4 of your 22 declaration, what does that read?</p> <p>23 A. "I worked closely with Kathleen Sebelius, 24 then Secretary of the Department of Health and Human 25 Services, and her staff, to draft language in the</p>
<p style="text-align: right;">Page 10</p> <p>1 conditions described in subparagraph b. 2 Subparagraph b is conditions described in the 3 statute. For purposes of subparagraph A, the 4 following conditions are described in this 5 subparagraph. One, asbestosis, pleural thickening, 6 or pleural plaques as established by interpretation 7 of s B reader, qualified physician of a plain chest 8 x-ray or interpretation of the computed tomographic 9 radiograph, that's a CT, of the chest by a qualified 10 physician as determined by the secretary. And other 11 -- or such other diagnostic standards as the 12 secretary specifies.</p> <p>13 Q. Okay. So to summarize, a person 14 qualifies if they have a diagnosis of one of those 15 conditions described in -- is diagnosed with one or 16 more conditions described in that subparagraph b 17 which you just read?</p> <p>18 A. Yeah, that's what the statute says, and 19 that's what we -- the statute is written that way 20 because we wanted people in Libby to be covered.</p> <p>21 Q. Now, Max, I would like you to now draw 22 your attention to the first tab, Exhibit 108.</p> <p>23 A. Yeah, here it is.</p> <p>24 Q. And what is this exhibit?</p> <p>25 A. This is a declaration by me, Max Baucus.</p>	<p style="text-align: right;">Page 12</p> <p>1 Affordable Care Act to ensure that physicians at the 2 Center for Asbestos Related Disease, that is CARD, 3 in Libby, Montana, would be qualified under the 4 language of the Act to diagnose asbestosis, pleural 5 thickening and pleural plaques.</p> <p>6 Q. And so did the language that you just 7 read under Section 1881A provide that language?</p> <p>8 A. Yes, it does, yes.</p> <p>9 Q. And then in paragraph 6, you state?</p> <p>10 A. Do you want me to read that?</p> <p>11 Q. Yes.</p> <p>12 A. Okay. After passage of the Affordable 13 Care Act, Secretary Sebelius' department determined 14 that physicians at the Center for Asbestos Related 15 Disease are qualified under the language of the Act 16 to diagnose asbestosis -- I don't know that word -- 17 asbestosis, pleural thickening, or pleural plaques 18 by interpretation of a computed tomographic 19 radiograph of the chest.</p> <p>20 Q. Is that still your testimony?</p> <p>21 A. Yes.</p> <p>22 Q. And paragraph 7.</p> <p>23 A. 7 reads, Thus physicians at CARD are 24 qualified under the Act to diagnose asbestosis, 25 pleural thickening, pleural plaques by</p>

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<p style="text-align: right;">Page 13</p> <p>1 interpretation of a computed tomographic radiograph 2 of the chest.</p> <p>3 Q. And that's still your testimony?</p> <p>4 A. It is.</p> <p>5 Q. And paragraph 8?</p> <p>6 A. 8. Moreover, individuals diagnosed by 7 CARD physicians to have asbestosis, pleural 8 thickening, or pleural plaques are eligible for 9 Medicare benefits under the amendments to the Social 10 Security Act enacted by the Affordable Care Act.</p> <p>11 Q. Is that still your testimony?</p> <p>12 A. It is.</p> <p>13 Q. And that was the intention of passing the Act?</p> <p>14 A. Absolutely.</p> <p>15 Q. And paragraph 9?</p> <p>16 A. This is longer. It was my express intention and the express intention of Secretary Sebelius to have the language of the Affordable Care Act enable physicians at CARD be determined qualified to diagnose asbestosis, plural thickening and pleural plaques by interpretation of a computed tomographic radiograph of the chest. It was also my express intention and the express intention of Secretary Sebelius that individuals diagnosed by</p>	<p style="text-align: right;">Page 15</p> <p>1 based on review of plain chest x-rays of individuals 2 and individuals so diagnosed by B Reader physicians 3 are eligible for Medicare benefits under the 4 amendments to the Social Security Act enacted by 5 Affordable Care Act.</p> <p>6 Q. Is that still your testimony?</p> <p>7 A. It is, yep.</p> <p>8 Q. And so your testimony is that B Readers can diagnose individuals and make them eligible for Medicare benefits?</p> <p>9 A. Yeah, B Readers finds a positive reading, 10 yeah, it qualifies.</p> <p>11 Q. Okay. And how about paragraph 11?</p> <p>12 A. It was my express intention and express intention of Secretary to have the language of the Affordable Care Act ensure that if B Reader qualified physicians diagnosed asbestosis, pleural thickening, and pleural plaques based on review of plain chest x-rays of individuals, these individuals would be eligible for Medicare benefits under the amendments to the Social Security Act enacted by the Affordable Care Act.</p> <p>13 Q. And is that still your testimony?</p> <p>14 A. Yep, yes.</p> <p>15 Q. Now, Max, I would like to draw your</p>
<p style="text-align: right;">Page 14</p> <p>1 CARD physicians to have asbestosis, pleural 2 thickening, or pleural plaques would be eligible for 3 Medicare benefits under the amendments to the Social 4 Security Act enacted by the Affordable Care Act.</p> <p>5 Q. And that's still your testimony?</p> <p>6 A. It is.</p> <p>7 Q. Doctor -- I mean, Senator, I would like you to take a look at tab 6, Exhibit 301.</p> <p>8 A. All right. Okay.</p> <p>9 Q. And do you recognize what that is?</p> <p>10 A. This an Overview Information Department 11 of HHS, and it's -- I guess it's -- it relates to 12 agency funding.</p> <p>13 MR. DUERK: Object on foundation grounds. Go ahead.</p> <p>14 Q. (By Mr. Bechtold) Have you seen this document before, Max?</p> <p>15 A. I don't think so. Nope, I haven't seen 16 this.</p> <p>17 Q. All right. I will carry on.</p> <p>18 A. Okay.</p> <p>19 Q. Let's look -- go back to your declaration, and now to paragraph 10.</p> <p>20 A. 10. After passage of the Affordable Care 21 Act, B Reader qualified physicians may diagnosis 22 asbestosis, pleural thickening, and pleural plaques</p>	<p style="text-align: right;">Page 16</p> <p>1 attention to tab 10.</p> <p>2 A. Okay.</p> <p>3 Q. You're not a medical doctor, are you?</p> <p>4 A. I am not.</p> <p>5 Q. But B Readers are doctors, are they not?</p> <p>6 A. That's correct, they are.</p> <p>7 Q. But you're aware that B Readers do not make clinical diagnoses, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And B Readers just interpret x-rays, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. So why does the Affordable Care Act state that a qualifying diagnosis is established by interpretation by a B Reader qualified physician of a plain chest x-ray or interpretation of a computed tomographic radiograph of the chest as a qualified physician as determined by the Secretary when B Readers don't make clinical diagnoses?</p> <p>12 MR. DUERK: Objection, foundation, no prior 13 disclosure for his opinion. Go ahead.</p> <p>14 THE WITNESS: Well, the intent here is to make sure 15 that any person in Libby related to Libby's asbestos who 16 has asbestos-related disease is covered. That's the 17 purpose. And as I was talking to people in Libby when</p>

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<p>Page 17</p> <p>1 doing all this, it became apparent to me that it's 2 difficult to read a lot of these chest x-rays because the 3 disease is so varied and different individuals have 4 different variations of the disease. So while I'm sure 5 that everybody is covered, one doctor may miss a person 6 who should be covered, and another doctor will find it. 7 It's conclusive and responsible. So the point of all this 8 is to assure that even B Readers do not make, quote, 9 diagnoses, but if a B Reader finds a positive reading with 10 the CT scan or x-ray, that that's sufficient to allow the 11 patient to be qualified.</p> <p>12 So the main point being here that there are 13 various ways for a positive determination to be made. One 14 is a diagnoses as CARD and another is a positive reading 15 by a B Reader, even though the B Reader does not 16 technically diagnosis. The B Reader finds a positive 17 result, then that's sufficient to qualify for Medicare 18 coverage.</p> <p>19 MR. DUERK: The same objections, move to strike. Go 20 ahead.</p> <p>21 Q. (By Mr. Bechtold) And so in your 22 declaration, when you testify that -- that in 23 paragraph 10 that B Reader qualified physicians may 24 diagnosis asbestosis, pleural thickening and pleural 25 plaques, that's with the recognition that these are</p>	<p>Page 19</p> <p>1 chance of early detection and treatment of 2 asbestos-related disease."</p> <p>3 Boy that's true. That's my reading.</p> <p>4 This piece bears repeating.</p> <p>5 "Let me refine that point. For a long 6 time, we've been talking to lung specialists across 7 the country about the Libby tremolite asbestos, and 8 we got just so-so responses about how dangerous it 9 is. Why? Because virtually none of these doctors 10 experienced dealing with the pernicious kind of 11 asbestos we have in Libby. It took a long time to 12 get their attention. We finally got some doctors to 13 say this stuff in Libby is wicked stuff. That's 14 why, frankly, EPA has started to understand how bad 15 this really is."</p> <p>16 "Essentially, the lack of access to 17 health care services in Libby-I will say it 18 again-has actually worsened the effects of this 19 contamination. It is worked to their disadvantage."</p> <p>20 "The language before us today helps to 21 solve this. It allows us to fulfill the commitment 22 we made to the people of Libby when we passed the 23 Affordable Care Act 30 years ago. Heaven forbid, if 24 in the future another Superfund site like Libby 25 emerges, the bill before us today will allow the</p>
<p>Page 18</p> <p>1 not clinical diagnoses?</p> <p>2 MR. DUERK: The same objections, foundation, no prior 3 disclosure, relevance, move to strike. Go ahead.</p> <p>4 THE WITNESS: Yes.</p> <p>5 Q. (By Mr. Bechtold) So why did Congress 6 include that in the Affordable Care Act?</p> <p>7 A. Because I put it in. Pretty simple. I 8 put it in for good reason. People in Libby needed 9 justice, and the members of Congress agreed to put 10 it in. So that was passed.</p> <p>11 Q. And I would like to draw your attention 12 to Exhibit 112 again, which is --</p> <p>13 A. Which tab?</p> <p>14 Q. It is tab 3, sorry. And then go to page 15 9. And again, this is your testimony from the 16 Congressional Record?</p> <p>17 A. Right, that's right.</p> <p>18 Q. Could you take a look at the paragraph 19 that starts with, "Medical Care in Libby" about five 20 paragraphs from the bottom?</p> <p>21 A. Page 9?</p> <p>22 Q. Yeah.</p> <p>23 A. Okay. "Medical care in Libby has 24 historically been limited due to Libby's isolated 25 location and economic situation, thus reducing the</p>	<p>Page 20</p> <p>1 Secretary to use the authorities in this provision 2 to fulfill our commitment to provide health care 3 services for those residents as well.</p> <p>4 Q. So, Max, when you stated earlier that 5 doctors didn't seem to recognize --</p> <p>6 A. Correct.</p> <p>7 Q. -- is this the sentiment you were --</p> <p>8 A. Yes, that is a sentiment. That's 9 basically the point, that's correct.</p> <p>10 Q. So why did you include the provision 11 about allowing B Readers and other readers to have 12 interpretations qualify as diagnoses?</p> <p>13 MR. DUERK: Objection, foundation, relevance, no 14 prior disclosure.</p> <p>15 THE WITNESS: Because we wanted to make sure that 16 everybody who had the disease was covered. That meant the 17 statute to be read in an inclusive way. And the inclusion 18 would mean not only diagnosis determined by the CARD 19 Clinic, but also if a B Reader were to find a positive 20 indication of asbestos-related disease, that that would be 21 enough to allow that person to be covered under Medicare.</p> <p>22 So I wanted to make sure that if a case was 23 missed at CARD, by the CARD Clinic, that it would be 24 picked up by someone else, by another doctor, we're 25 talking about doctors here, radiologists who would look at</p>

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<p style="text-align: right;">Page 21</p> <p>1 CT scans of the patient. And if that doctor finds a 2 positive indication of asbestos-related disease, that that 3 would be sufficient. I wanted to make sure that the 4 statute was sufficiently inclusive and people would 5 not be missed because of a misdiagnosis.</p> <p>6 Q. (By Mr. Bechtold) So for purposes of the 7 statute, does the word diagnosis include 8 interpretation by B Readers?</p> <p>9 MR. DUERK: Objection, foundation, no prior 10 disclosure, relevance.</p> <p>11 THE WITNESS: Yes, absolutely. That's the whole 12 point of this.</p> <p>13 Q. (By Mr. Bechtold) And it sounds like 14 from your testimony before Congress, that you were 15 aware that other doctors didn't always agree with 16 CARD doctors?</p> <p>17 A. No question, no question. Well, for a 18 lot of reasons. I mean, there's a different kinds 19 of asbestos that is more pernicious than asbestos 20 found in other parts of the country. The only time 21 that you get doctors is it's really bad. It's the 22 bad asbestos and it has to be picked up early.</p> <p>23 Q. Max, I'm going to direct your attention 24 to tab 5, which is Exhibit 76, and I'd like you to 25 go to page 4 of that.</p>	<p style="text-align: right;">Page 23</p> <p>1 A. What was?</p> <p>2 Q. The purpose, again, of passing the 3 statute was to afford as much possible care as 4 possible.</p> <p>5 A. Oh, you asked me about the purpose, yeah, 6 exactly. I mean, people in Libby --</p> <p>7 MR. DUERK: Objection, nonresponsive.</p> <p>8 Q. (By Mr. Bechtold) Go ahead.</p> <p>9 A. People -- I mean, it's a far corner part 10 of Montana. They just need help. I just wanted to 11 do all I could do to help. And I wanted the statute 12 to be broad and I wanted the coverage to be broad.</p> <p>13 Q. Okay. Max, I'm going to draw your 14 attention now to tab 4, which is Exhibit 137.</p> <p>15 A. Okay.</p> <p>16 Q. And I would like to start at the last 17 page, page 3. And this is a document you've seen 18 before, correct?</p> <p>19 A. Yes.</p> <p>20 MR. DUERK: Objection, non-disclosure. Go ahead.</p> <p>21 Q. (By Mr. Bechtold) Now, were you aware, 22 if we look that Docket No. 97, SDF 292 at the very 23 bottom, were you aware that CARD has been signing 24 these environmental health hazard forms for patients 25 without a clinical diagnosis since they've begun</p>
<p style="text-align: right;">Page 22</p> <p>1 A. Okay.</p> <p>2 Q. Do you recognize what this document is?</p> <p>3 A. Yeah, I think that's a submission for 4 coverage.</p> <p>5 MR. DUERK: Objection, no prior disclosure, 6 foundation.</p> <p>7 Q. (By Mr. Bechtold) You didn't create this 8 form, did you?</p> <p>9 A. No.</p> <p>10 Q. Do you know who did?</p> <p>11 A. I think HHS did, or maybe an agency of 12 HHS.</p> <p>13 Q. That's not something that was created by 14 statute, was it?</p> <p>15 A. That's correct. That's a -- this is 16 after the statute passed. HHS, pursuant to its 17 authority, designed -- or set up this procedure and 18 created this checklist.</p> <p>19 Q. If there's some confusion between this 20 checklist and the statute, which should govern had?</p> <p>21 MR. DUERK: Objection, foundation, no prior 22 disclosure.</p> <p>23 THE WITNESS: The statute, clearly the statute.</p> <p>24 Q. (By Mr. Bechtold) And that was the 25 purpose of passing the statute, correct?</p>	<p style="text-align: right;">Page 24</p> <p>1 going through the EHH guideline?</p> <p>2 A. Well, this says it's an undisputed fact.</p> <p>3 The answer is, I'm not personally aware, but it's 4 certainly possible.</p> <p>5 Q. And you're aware that CARD has been 6 diagnosing individuals with asbestos-related 7 diseases even as qualified physicians under the Act, 8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. And you're aware that B Readers have been 11 identifying people with asbestos-related disease 12 even though CARD doesn't find those same individuals 13 -- doesn't diagnose those same individuals with an 14 asbestos-related disease, correct?</p> <p>15 MR. DUERK: Objection, form, leading, non-disclosure. 16 Go ahead.</p> <p>17 THE WITNESS: Yes.</p> <p>18 Q. (By Mr. Bechtold) And your testimony 19 from your declaration is that either CARD physicians 20 or B Readers with this diagnoses may qualify for 21 Medicare, correct?</p> <p>22 A. Yes.</p> <p>23 Q. So have you been aware that CARD has been 24 submitting these individuals for environmental 25 health hazard checklist benefits through Medicare</p>

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<p style="text-align: right;">Page 25</p> <p>1 when B readers alone find an asbestos-related 2 disease?</p> <p>3 MR. DUERK: Objection.</p> <p>4 THE WITNESS: No. I just don't know.</p> <p>5 Q. (By Mr. Bechtold) Max, I'm going to draw 6 your attention now to your -- to tab 8, Exhibit 348.</p> <p>7 MR. DUERK: Has this been admitted into evidence?</p> <p>8 MR. BECHTOLD: Nothing has been admitted yet.</p> <p>9 Q. (By Mr. Bechtold) I'm going to draw your 10 attention to Exhibit 348. Do you know what this is?</p> <p>11 A. This is my deposition earlier.</p> <p>12 Q. Do you recall giving a deposition in July 13 of 2022?</p> <p>14 A. I do.</p> <p>15 Q. Do you recall being asked some questions 16 about your declaration in July of 2022?</p> <p>17 A. I do.</p> <p>18 Q. I'll draw your attention to page 9 and 10 19 of the deposition. So on page 9.</p> <p>20 A. Page 9. I see it.</p> <p>21 Q. So let's start on line 21. Just review 22 that to yourself, please.</p> <p>23 A. Okay. Okay.</p> <p>24 Q. Does that refresh your memory a little 25 bit about the declaration?</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. And based upon your understanding of your 2 drafting of the Affordable Care Act, how does one 3 individual get diagnosed with an asbestos-related 4 disease?</p> <p>5 A. Either by the CARD Clinic and getting 6 diagnosed as having the disease, or when a B Reader 7 finds a positive indication. Either case, that 8 qualifies.</p> <p>9 MR. BECHTOLD: Well, Max, thank you for your time. I 10 have no more questions right now. Mr. Duerk may have some 11 cross-examination questions, at which time I can follow-up 12 afterward.</p> <p>13 THE WITNESS: Sure. All right.</p> <p>14 MR. DUERK: Let's go ahead and take a short break.</p> <p>15 VIDEO OPERATOR: We're going off the record. The 16 time is 10:46 a.m.</p> <p>17</p> <p>18 (Whereupon a recess was taken)</p> <p>19</p> <p>20 VIDEO OPERATOR: We are back on the record. The time 21 is 10:56 a.m.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 26</p> <p>1 A. Yeah.</p> <p>2 Q. So is it still your testimony that this 3 declaration was drafted with the help of your staff?</p> <p>4 A. It is.</p> <p>5 Q. And you signed it because you believed it 6 to be true?</p> <p>7 A. Yes. That's true.</p> <p>8 Q. Okay. I would like to now move on to 9 page 20.</p> <p>10 A. All right. All right, 20.</p> <p>11 Q. And I'll draw your attention to line 13. 12 Just read through that to yourself and refresh your 13 memory.</p> <p>14 A. All right.</p> <p>15 Q. And then on to page 21.</p> <p>16 A. Yeah. Yeah.</p> <p>17 Q. So is your testimony still that the idea 18 behind the Affordable Care Act was to provide 19 Medicare incentives for people who were exposed to 20 Libby asbestos, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And to provide Medicare coverage for 23 those who were diagnosed with asbestos-related 24 diseases, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 28</p> <p>1 CROSS-EXAMINATION</p> <p>2</p> <p>3 BY MR. DUERK:</p> <p>4 Q. Senator Baucus, I'm Adam Duerk. We've 5 taken your deposition once before today; is that 6 correct?</p> <p>7 A. That's correct.</p> <p>8 Q. That was July of 2022, last year?</p> <p>9 A. Sounds about right.</p> <p>10 Q. Sir, to begin with, I would just like to 11 review with you what you did in anticipation of your 12 deposition today. Who, if anyone, did you speak to 13 about your deposition prior to today?</p> <p>14 A. I spoke to Mr. Bechtold.</p> <p>15 Q. Okay. And when did that conversation 16 occur?</p> <p>17 A. Yesterday.</p> <p>18 Q. How long was that conversation?</p> <p>19 A. Fifteen minutes, twenty minutes.</p> <p>20 Q. Did you speak with anyone else before 21 today's deposition?</p> <p>22 A. No.</p> <p>23 Q. Okay. So one conversation with Tim 24 Bechtold?</p> <p>25 A. Uh-huh.</p>

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<p style="text-align: right;">Page 29</p> <p>1 Q. We've reviewed some material together 2 during your deposition? 3 A. Yeah. 4 Q. In that fifteen-minute conversation, did 5 you review those materials with Mr. Bechtold? 6 A. Yes. 7 Q. Between the time of your deposition last 8 July and this morning, have you spoken with anyone 9 else about your deposition? 10 A. No. 11 Q. And, sir, the reason that I ask is, at 12 your last deposition, we spoke about the declaration 13 that you signed; is that right? 14 A. Yes. 15 Q. That deposition lasted several hours, do 16 you recall that? 17 A. Yes, I do. 18 Q. Okay. 19 A. It was a long time. 20 Q. It was a long time. And during that 21 deposition, I asked you about any of the materials 22 that you reviewed in anticipation of that July 20, 23 2022 deposition, and do you recall at the last 24 deposition, you told me that you didn't recall 25 speaking with anyone prior to that deposition about</p>	<p style="text-align: right;">Page 31</p> <p>1 sound accurate? 2 A. Yeah, except I think at some point I saw 3 the declaration and knew what was in the declaration 4 because I signed it. 5 Q. Sure. But aside from that declaration, 6 last time we were together, you had seen no written 7 pleadings, no copies of the complaint, no 8 depositions, no EHH forms, no written documents of 9 any kind, correct? 10 A. Correct. 11 Q. At the last deposition, you essentially 12 testified that your testimony was based on your 13 memory alone; is that right? 14 A. Yes. 15 Q. In terms of any file in this case, you 16 don't have a file related to this current lawsuit 17 related to the opinions that you have been offered? 18 A. That's correct. 19 Q. Okay. You haven't talked to any 20 witnesses in this case, right? 21 A. Correct. 22 Q. Last time before you were deposed, you 23 were not aware that you had been declared an expert 24 witness in this case, correct? 25 A. All I know is Dr. Black asked me if I</p>
<p style="text-align: right;">Page 30</p> <p>1 the basis of your testimony? 2 A. Yes. 3 Q. Okay. I also asked in July of 2022, 4 whether you recalled reviewing any written records, 5 and during the last deposition, you indicated that 6 you had not reviewed anything in writing, do you 7 recall that? 8 A. Yeah, I do. Yes, that's right. 9 Q. During that last deposition, likewise, 10 you testified that you had had a 15-minute 11 conversation with Dr. Black before the deposition, 12 but other than that 15-minute conversation, you 13 didn't recall any other conversations? 14 A. That's correct. 15 Q. Okay. You didn't remember any written 16 information being sent to you other than a draft of 17 the declaration before your last deposition, 18 correct? 19 A. Correct. 20 Q. So CARD sent you no written materials 21 prior to that last deposition, right? 22 A. Correct. 23 Q. And so I didn't have an opportunity to 24 ask you any questions about any written materials 25 because you said you hadn't seen any, does that</p>	<p style="text-align: right;">Page 32</p> <p>1 wanted to testify, and I said yes. 2 Q. But during the last deposition when I 3 asked you, it appeared you weren't aware that you'd 4 been declared an expert in this case. 5 A. That's correct. 6 Q. Okay. Sir, when we visited together in 7 July, you agreed with me that expert witnesses must 8 be armed with facts, does that sound right? 9 A. Anybody speaks should be armed with 10 facts. 11 Q. Right. And if someone is offered as an 12 expert witness in a federal trial, it would be 13 especially important for them? 14 A. Well, I don't know that's a legal 15 determination. I'm not qualified to answer that. 16 Q. Okay. Sir, if you would look at tab 20, 17 please, I'm looking at page 36. 18 A. This is the deposition? 19 Q. Yes. And, sir, this is your deposition 20 from July 19th, 2022. I was there, you were there, 21 Mr. Bechtold was there and the Court Reporter was 22 there, correct? 23 A. Just a second. This is falling apart. 24 Okay, say again. 25 Q. Sure. I was there, you were there?</p>

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<p style="text-align: right;">Page 33</p> <p>1 A. What page are you on?</p> <p>2 Q. We're at page 36, line 10. We were 3 talking about the requirement for understanding 4 facts of the case. So I'll read this part of your 5 deposition and please tell me if I'm right.</p> <p>6 A. Page 36?</p> <p>7 Q. Page 36, and I'm starting at line 10 and 8 I'll continue to line 24.</p> <p>9 A. I'm trying to find a page number.</p> <p>10 Q. Top left-hand corner of each of the 11 individual pages are marked.</p> <p>12 A. Mine only goes to 35.</p> <p>13 Q. If you can hand it to me, I can help you. 14 You were on tab 19. Here's tab 20.</p> <p>15 A. Okay. Thanks for helping me find this.</p> <p>16 Q. Do you see a copy of a transcript of your 17 deposition taken July 19th, 2022?</p> <p>18 A. Yes.</p> <p>19 Q. If you would go to page 36.</p> <p>20 A. Page 36, okay.</p> <p>21 Q. I'll read lines 10 through 24. Please 22 tell me if I've read them correctly.</p> <p>23 "Q. Okay. Sir, in order to have 24 meaningful testimony --</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. (By Mr. Duerk) Sir, in terms of the 2 information in writing that I had from you about the 3 opinions you intended to express last time, the only 4 information that I had from you was your declaration 5 to the best of your knowledge, fair?</p> <p>6 A. I guess. You tell me if that's all you 7 had. I don't know what you had.</p> <p>8 Q. Yeah, right. I'll represent to you that 9 that's all I had.</p> <p>10 A. Okay. If that's case, that's the case. 11 It must be a fact.</p> <p>12 Q. I was not aware of any documents that you 13 had been testifying about. 14 In terms of the testimony that you 15 provided related to your expert opinions last time, 16 I asked you about the Congressional Record and 17 legislative history. Do you recall --</p> <p>18 A. I do.</p> <p>19 Q. Okay. And last time we were together at 20 the deposition, you had not reviewed the 21 Congressional Record or the legislative history of 22 this section of the Affordable Care Act, correct?</p> <p>23 A. I have not read the record, that's 24 correct, because I was part of it at all. I spoke 25 on the floor of the Senate. Part of the record was</p>
<p style="text-align: right;">Page 34</p> <p>1 Q -- a witness must be armed with facts, 2 fair?</p> <p>3 A. Generally.</p> <p>4 Q. Okay. Is there a situation that you 5 can imagine where it wouldn't be important for a 6 witness to know the facts of a case?</p> <p>7 A. No.</p> <p>8 Q. Okay. So would you agree that in 9 order to offer any opinions about any matter, it's 10 important for a witness to be equipped with the 11 facts, fair?</p> <p>12 A. Yeah."</p> <p>13 Did I read that correctly?</p> <p>14 A. Yep.</p> <p>15 Q. Okay. So in terms of the facts of the 16 case that were before us last time, you had not 17 reviewed any of the pleadings in this case, any of 18 the deposition testimony, you had not reviewed the 19 statement of undisputed facts or any of the other 20 documents that Mr. Bechtold put in front of you 21 today, is that fair?</p> <p>22 A. Yes.</p> <p>23 Q. And, sir, in terms of the disclosure in 24 this case --</p> <p>25 (Pause)</p>	<p style="text-align: right;">Page 36</p> <p>1 a recording of what I said.</p> <p>2 Q. Sir, in terms of any communication that 3 you've had with the Social Security administration 4 about the EHH provisions of the Affordable Care Act, 5 we reviewed some communication between you and the 6 Social Security Administration at your deposition 7 today or prior, fair?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And in terms of any communication 10 that you've had with the Social Security 11 Administration, have you had any communication with 12 the Social Security Administration in the last 10 13 years?</p> <p>14 A. No -- well, 10 years. No.</p> <p>15 Q. Okay. In terms of any communication with 16 the CARD Clinic or any individual who has ever 17 worked at the CARD Clinic, have you had any 18 communication with anybody at the CARD Clinic in the 19 last 10 years?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Who?</p> <p>22 A. Dr. Black.</p> <p>23 Q. Okay. Aside from Dr. Black, have you 24 communicated with anybody else at the CARD Clinic?</p> <p>25 A. No.</p>

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<p style="text-align: right;">Page 37</p> <p>1 Q. And when was the last time you recall 2 talking to Dr. Black?</p> <p>3 A. Oh, months ago, a year ago. He asked me 4 if I would be a witness in this case, and I said 5 yes.</p> <p>6 Q. Okay. Outside of Dr. Black asking you 7 that question, do you recall any specifics of the 8 communication?</p> <p>9 A. No. I said that I would love to.</p> <p>10 Q. Prior to that conversation with 11 Dr. Black, when was the last time you recall having 12 any conversations with him?</p> <p>13 A. Oh, I went up to the Clinic dedication up 14 there.</p> <p>15 Q. And, sir, that was in about 2009 or 2010?</p> <p>16 A. It could be. It was several years ago.</p> <p>17 Q. I believe when we visited at your last 18 deposition, you said it was approximately 10 years 19 ago, maybe more, does that sound about right?</p> <p>20 A. It could be more.</p> <p>21 Q. Okay. So that would put us at 2013, 22 perhaps earlier?</p> <p>23 A. Probably earlier.</p> <p>24 Q. Earlier than --</p> <p>25 A. Because I went to Beijing in 2013.</p>	<p style="text-align: right;">Page 39</p> <p>1 responsibility at that point, fair?</p> <p>2 A. Certainly.</p> <p>3 Q. Sir, I'd like to talk specifically about 4 whether or not anyone at CARD has alerted you to 5 conversations that CARD has had with the Social 6 Security Administration about these provisions in 7 the Affordable Care Act related to a diagnosis of 8 asbestos-related disease?</p> <p>9 A. No.</p> <p>10 Q. No? Okay. Are you aware of the sworn 11 testimony from SSA employee Heather Hilman in this 12 case?</p> <p>13 A. No.</p> <p>14 Q. Have you seen or been alerted to any 15 e-mails from the Social Security office sent to CARD 16 that indicate to CARD that they are not to submit 17 patients who have not been diagnosed with an 18 asbestos-related disease for Medicare benefits?</p> <p>19 A. No.</p> <p>20 Q. And so, in your mind, both during your 21 deposition testimony today and last July, it appears 22 that you would be concerned if there were patients 23 who were submitted for Medicare benefits who did not 24 have a diagnosis of asbestos-related disease, fair?</p> <p>25 A. No, that's not fair. Because it could be</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. Okay.</p> <p>2 A. So it had to have been earlier.</p> <p>3 Q. In terms of that dedication ceremony, 4 what conversations, if any, do you remember having 5 with Dr. Black or any other CARD staff members?</p> <p>6 A. Just how this went along.</p> <p>7 Q. In terms of any communication with 8 anybody from the SSA during that time frame, do you 9 remember speaking with anybody at the Social 10 Security Administration?</p> <p>11 A. Nope.</p> <p>12 Q. Okay. In terms of your involvement in 13 passing legislation, the law is set forth in the 14 published statute itself, correct?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. And in terms of how that law is 17 interpreted or enforced, once legislation is passed 18 into law, it's no longer necessarily within your 19 purview to enforce that law, correct?</p> <p>20 A. Well, no. I mean, if I have something to 21 do with passing the law, I make sure that the law is 22 upheld. So I do have that interest.</p> <p>23 Q. Right. But in terms of ensuring that the 24 law is adhered to, abided by, read, recognized and 25 understood, that's not your task or your</p>	<p style="text-align: right;">Page 40</p> <p>1 a B Reader to find a positive determination. And 2 then that would indicate that that person has an 3 asbestos-related disease.</p> <p>4 Q. I understand what you're saying today. 5 I've not heard this testimony from you before. So 6 I'll go about it this way.</p> <p>7 MR. BECHTOLD: Misstates his testimony.</p> <p>8 Q. (By Mr. Duerk) I'll go about it this 9 way. In order to be Medicare eligible, it is 10 important for a person to be sick with 11 asbestos-related disease, correct?</p> <p>12 A. Yep.</p> <p>13 Q. Okay. And your intent was to make sure 14 that individuals in Libby would receive Medicare 15 benefits if they were sick due to asbestos exposure, 16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. It was your intent and the intent 19 of other United States Senators to make sure that in 20 order for a patient to be Medicare eligible, they 21 had to have been exposed to Libby asbestos and be 22 suffering from that exposure to Libby asbestos?</p> <p>23 A. Right.</p> <p>24 Q. It was not your intent to allow patients 25 to be submitted for lifetime Medicare benefits if</p>

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<p style="text-align: right;">Page 45</p> <p>1 A. Correct.</p> <p>2 Q. Okay. During your deposition last time, 3 I asked you about B Readers and the diagnostic 4 standards for physicians at CARD. And last time we 5 were together, you said you were not qualified to 6 answer any of these questions. Do you recall that?</p> <p>7 A. No, I do not.</p> <p>8 Q. Okay. If you could turn to page 59 of 9 your deposition. I'm looking at line 2.</p> <p>10 A. Okay.</p> <p>11 Q. You don't hold yourself out nor have you 12 ever held yourself out as a physician, correct?</p> <p>13 A. Correct.</p> <p>14 Q. You didn't go to medical school?</p> <p>15 A. Correct.</p> <p>16 Q. You don't claim to know or understand the 17 intricacies of what's required for a diagnosis of 18 asbestos-related disease under the American Thoracic 19 Society standards, correct?</p> <p>20 A. Right.</p> <p>21 Q. Now, I'll put the question to you this 22 way. So if CARD physicians have admitted under oath 23 that B Readers, just radiologists, who only look at 24 a film did not diagnose, you would have no reason to 25 disagree with me, correct?</p>	<p style="text-align: right;">Page 47</p> <p>1 A. Correct.</p> <p>2 Q. You say correct today, but during your 3 testimony in July, you said, you couldn't answer 4 that question. You had no basis to answer that 5 question, correct?</p> <p>6 A. Yes, but also I want to do something else 7 here. Earlier you said that a witness, an expert 8 witness, should have the facts. So I went back and 9 I reviewed so that I would have the facts. I 10 reviewed the statute to get the facts. So now I 11 have more facts and now I can answer that more 12 accurately.</p> <p>13 Q. And, sir, I appreciate that, but when I 14 deposed you in July of 2022, my intent was to get 15 all of the information from you that we could 16 anticipate here at trial so that I had a clear idea 17 of what your testimony was.</p> <p>18 A. And I have a better idea because I have 19 more facts.</p> <p>20 Q. I have a better idea of what you're 21 saying here today.</p> <p>22 A. Correct.</p> <p>23 Q. But it's also fair to say that you didn't 24 say anything about what B Readers did or what a 25 radiologist's role was in the diagnostic process at</p>
<p style="text-align: right;">Page 46</p> <p>1 A. Based on what you just told me. Based on 2 only what you just said, yes. There may be more to 3 it, but based upon what you just said.</p> <p>4 Q. Okay. And then I'll read what I asked 5 you precisely and what your answer is on page 59.</p> <p>6 A. Okay.</p> <p>7 Q. I'm looking at page 59, line 14.</p> <p>8 Q. So if CARD physicians have admitted 9 under oaths that B Readers, just radiologists, who 10 only look at a film do not diagnose, you wouldn't 11 have a reason to disagree with that.</p> <p>12 A. Again, if there's no diagnosis, that 13 person should not get -- should not be covered."</p> <p>14 Did I read that correctly?</p> <p>15 A. You read that correctly.</p> <p>16 Q. And then I asked you about a narrower and 17 specific question that I wanted to anchor your 18 testimony to. And that question was, "Would you 19 dispute that radiologists --</p> <p>20 A. Are you reading or is this something new?</p> <p>21 Q. Something new.</p> <p>22 A. Go ahead.</p> <p>23 Q. "Radiologists do not diagnosis 24 asbestos-related disease and are not responsible for 25 diagnosing asbestos-related disease?</p>	<p style="text-align: right;">Page 48</p> <p>1 your July 22 deposition, correct?</p> <p>2 MR. BECHTOLD: Misstates --</p> <p>3 THE WITNESS: Before I refreshed my recollection and 4 going back and getting the facts.</p> <p>5 MR. BECHTOLD: Misstates the testimony.</p> <p>6 Q. (By Mr. Duerk) Sir, in terms of your 7 declaration itself, I'm looking at tab 17, what's 8 been marked as Exhibit 108 here. I'm looking at 9 paragraph 10. Do you see that?</p> <p>10 A. Yeah.</p> <p>11 Q. Okay. Paragraph 10 says, "After passage 12 of the Affordable Care Act, B Reader qualified 13 physicians may diagnose asbestosis, pleural 14 thickening and pleural plaques based on review of 15 plain chest x-rays of individuals, and individuals 16 so diagnosed by B Reader physicians are eligible for 17 Medicare benefits under the amendments to the Social 18 Security Act enacted by the Affordable Care Act."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yep.</p> <p>21 Q. Okay. So your declaration says that B 22 Readers may diagnosis; not that a B Read equals a 23 diagnosis, correct?</p> <p>24 A. That's what -- I'm sorry, ask the 25 question again.</p>

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<p style="text-align: right;">Page 49</p> <p>1 Q. You said that B Readers may diagnosis. 2 A. Here? 3 Q. In your declaration. 4 A. Yeah, right. 5 Q. Right. B Readers may diagnosis; not that 6 a B Read equals a diagnosis, correct? 7 A. Correct. 8 Q. Okay. And in the language of the 9 Affordable Care Act itself, Section 1881A, and I'm 10 handing you a copy here, I'm looking at page 2. I'm 11 looking at individuals described under the 12 Affordable Care Act. So right in the middle of the 13 page do you see the section Individual Described. I 14 believe we read this into the record earlier. 15 A. Yes, we did. 16 Q. Individual described. In general, an 17 individual described in this paragraph is any 18 individual who is diagnosed with one or more 19 conditions described in subparagraph B. 20 Did I read that correctly? 21 A. Yep. 22 Q. Okay. So at least in terms of the law, 23 the law says that an individual must have a 24 diagnosis of asbestos-related disease, correct? 25 A. That's one condition. That's not the --</p>	<p style="text-align: right;">Page 51</p> <p>1 this way. Sir, in terms of the enforcement of this 2 law and its provisions, enforcement of the law comes 3 from the Social Security Administration, correct? 4 A. Medicare. 5 Q. Medicare? 6 A. And CMS. 7 Q. And CMS and the Social Security 8 Administration have a field office in Kalispell, 9 Montana to the best of your knowledge? 10 A. Right. 11 Q. Okay. And the Medicare claim forms, the 12 EHH forms, are filled out and signed by Dr. Black 13 and providers at the CARD Clinic to the best of your 14 knowledge, correct? 15 A. Correct. 16 Q. And those Medicare claim forms, to the 17 best of your knowledge, are then submitted to the 18 Social Security Administration field office in 19 Kalispell, Montana? 20 A. I don't know. 21 Q. Okay. Have you ever spoken with any of 22 the field office personnel? 23 A. No, no. 24 Q. Okay. You're not aware of the policies 25 and procedures they have for handling CARD Medicare</p>
<p style="text-align: right;">Page 50</p> <p>1 exclusive. 2 Q. Let's go directly to the conditions. The 3 conditions described are asbestosis, pleural 4 thickening or pleural plaques, correct? 5 A. Yep. 6 Q. Okay. And so here in the law, in order 7 to receive Medicare benefits, a patient must have a 8 diagnosis. And this is a -- this is a proposition 9 that you agreed with during your prior deposition, 10 correct? 11 A. Well, it all comes out with what the 12 definition and diagnosis is. That's what it's all 13 about. And under the statute, the diagnosis at 14 large is a diagnosis by the CARD clinic or an 15 affirmative determination by the B Reader. That is, 16 at large, a diagnosis. 17 Q. That is what you are saying, correct? 18 But the law -- 19 A. And that's what the law says, too. 20 Q. Sir, the law says an individual must have 21 a diagnosis. 22 A. I'm sorry. Now you're quibbling. 23 Q. No, I'm not quibbling. 24 MR. BECHTOLD: Argumentative. 25 Q. (By Mr. Duerk) I'm going to offer it</p>	<p style="text-align: right;">Page 52</p> <p>1 claim forms? 2 A. No. 3 Q. You've never seen the program operations 4 manual system? 5 A. No. 6 Q. Okay. You've never seen any e-mails back 7 and forth? 8 A. No. 9 Q. Let me ask the question. 10 A. I'm answering it anyways, no. Go ahead 11 and ask the question. 12 Q. I'm sure you've seen some e-mails before, 13 but here's the question. You've never seen any 14 e-mails between the CARD Clinic and the Social 15 Security Administration field office personnel, 16 correct? 17 A. Correct. 18 Q. Okay. And you've not seen any e-mails 19 recently between the CARD Clinic and Social Security 20 Administration as recently as two weeks ago, 21 correct? 22 A. Correct. 23 Q. So if I told you that the Social Security 24 Administration insisted that CARD patients have a 25 diagnosis of asbestos-related disease in order to be</p>

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<p style="text-align: right;">Page 53</p> <p>1 eligible for Medicare benefits, you've not seen that 2 communication? 3 A. Correct. 4 Q. And you would have no reason to disagree 5 with me, correct? 6 A. I have not seen it. 7 Q. Okay. In terms of how the Social 8 Security Administration treats these EHH Medicare 9 claim forms, that's not a job that you ever had, 10 correct? 11 A. Correct. 12 Q. And no one at CARD, prior to your 13 deposition, has shown you any communications 14 recently from SSA to CARD telling them that in order 15 to be Medicare eligible, a patient must have a 16 diagnosis, correct? 17 A. I have not seen any, no. And I've not 18 seen what you're describing. 19 Q. Sir, it was not your intent, Kathleen 20 Sebelius' intent or Christine Todd Whitman's intent, 21 to the best of your knowledge, to draft legislation 22 that would just make everyone in Libby Medicare 23 eligible if they did not have an asbestos-related 24 disease, correct? 25 A. That would not be my intent either.</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. So if a patient does not have a diagnosis 2 of an asbestos-related disease, if a patient is not 3 sick from Libby amphibole, they should not be 4 submitting for Medicare benefits, no exceptions, 5 correct? 6 A. Unless a B Reader finds a positive 7 designation. 8 Q. Okay. Let's look at Clip 8. 9 10 (Whereupon, Clip No. 8 was played 11 for the jury) 12 13 Q. (By Mr. Duerk) Does that accurately 14 reflect your sworn testimony from last July? 15 A. Yes. 16 Q. Okay. Sir, last July, during your 17 testimony, there wasn't any testimony from you about 18 this provision that a B Read constituted a 19 diagnosis, correct? 20 A. Correct. To the best of my recollection, 21 correct. 22 Q. All right. And then in terms of your 23 foundation about CARD's methodology for diagnosing, 24 that's not something that you ever made an inquiry 25 about, correct?</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Okay. It was also never your intent to 2 make it easier to defraud the Medicare program based 3 on any provisions that you put in the Affordable 4 Care Act? 5 A. Correct. 6 Q. There is no provisions stated in Section 7 1881 of the Affordable Care Act that creates an 8 exception for a patient to be eligible for Medicare 9 benefits without a diagnosis, correct? 10 A. Well, I don't want to quibble with 11 myself. It gets around to a diagnosis. 12 Q. Let's do it this way. During your 13 deposition last July in 2022, there was some 14 testimony to that point, correct? 15 A. I guess. 16 Q. Well, I'll play you what you said at that 17 time, okay? 18 MR. DUERK: This is Clip 6. 19 20 (Whereupon, Clip No. 6 was played 21 for the jury) 22 23 Q. (By Mr. Duerk) Did that accurately refer 24 to your testimony from last July? 25 A. It did.</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Correct. 2 Q. In terms of the specifics about the 3 intricacies of a diagnosis of asbestos-related 4 disease, you don't claim to understand what's 5 required for a diagnosis of ARD, correct? 6 A. Correct. 7 Q. In terms of the American Thoracic Society 8 standards, are you aware that Dr. Black and other 9 CARD employees have testified that in order to 10 establish a diagnosis of asbestos-related disease, 11 that requires more than just a B Read? 12 A. I'm not aware of that. 13 Q. Okay. Are you aware that according to 14 the sworn testimony of Dr. Black, in order to have a 15 valid diagnosis of asbestos-related disease, a 16 patient needs either a chest x-ray or a CT scan 17 interpreted showing an asbestos-related disease, 18 they need exposure history showing that the 19 individual was exposed to asbestos at some point, 20 and the patient needs a differential diagnosis 21 ruling out all other possible causes of those 22 radiographic findings? 23 A. That's a long question. Can you shorten 24 that up, please? 25 Q. I can. I'll represent to you that under</p>

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<p style="text-align: right;">Page 57</p> <p>1 the American Thoracic Society guidelines, a 2 diagnosis requires exposure history, a CT or chest 3 x-ray showing disease and a differential diagnosis 4 ruling out other potential causes. Were you aware 5 of that?</p> <p>6 A. No.</p> <p>7 Q. And would you defer to Dr. Black and 8 other medical professionals about what is required 9 for a diagnosis of an asbestos-related disease?</p> <p>10 A. Dr. Black's a physician. I trust 11 Dr. Black.</p> <p>12 Q. All right. Would you also trust the 13 NIOSH certified B Readers, the radiologists, M.D. 14 physicians that over-read all of that?</p> <p>15 A. I have no idea because I don't know of 16 them. I know Dr. Black.</p> <p>17 Q. Sir, were you aware that the CARD B 18 Readers, in this case, NIOSH certified B Readers, 19 when they learned of CARD's practice of saying that 20 their B Reads served as the basis of diagnosis left 21 their contracts and will not be reading for CARD 22 anymore?</p> <p>23 A. I'm not aware of that.</p> <p>24 MR. BECHTOLD: Objection, misstates the evidence.</p> <p>25 Q. (By Mr. Duerk) Sir, have you heard any</p>	<p style="text-align: right;">Page 59</p> <p>1 is the jury's job in this current action to look at 2 all of the facts, look at what the B Readers have 3 said, what the B Readers have done, to look at all 4 the --</p> <p>5 A. Of course, that's a different issue.</p> <p>6 You've asked me a different question.</p> <p>7 Q. All right.</p> <p>8 A. Those are two different points.</p> <p>9 Q. So, sir, do you know what a B Reader is?</p> <p>10 A. I have an idea.</p> <p>11 Q. Okay. What is your idea?</p> <p>12 A. It's a pulmonologist or somebody who's 13 qualified to determine whether or not there's a 14 positive or negative reading of an x-ray or a CT 15 scan.</p> <p>16 Q. All right.</p> <p>17 A. With respect to asbestos.</p> <p>18 Q. And sir --</p> <p>19 A. A doctor.</p> <p>20 Q. A doctor. Yep, an MD doctor?</p> <p>21 A. An MD doctor, anesthesiologist who is an 22 MD doctor. It could be an anesthesiologist or and 23 MD doctor.</p> <p>24 Q. Are you aware of what a B Reading 25 physician is indicating when they find signs of an</p>
<p style="text-align: right;">Page 58</p> <p>1 information about B Readers, Dr. Kanne, Dr. Meyer 2 Dr. Lynch in this case who once served on CARD's 3 panel of expert outside NIOSH B Readers?</p> <p>4 A. No.</p> <p>5 Q. Would it cause you any concern if CARD's 6 thoracic radiologist B Readers, when they learned 7 about this B Rad diagnosis practice at CARD, 8 terminated their contracts with the Center for 9 Asbestos-related Disease?</p> <p>10 A. I would have to know the facts. I can't 11 answer that without more facts.</p> <p>12 Q. All right. If those facts were true and 13 those B Readers have all testified under oath that 14 their reads do not constitute a diagnosis nor could 15 they constitute a diagnosis of asbestos-related 16 disease, would that concern you?</p> <p>17 A. You're assuming an answer and I would 18 need more facts. I cannot answer that question.</p> <p>19 Q. Okay. I can provide more facts. Are you 20 aware of what --</p> <p>21 A. You're not giving me enough. I'm would 22 have to know of independent examination, 23 investigation and inquiry before I was able to 24 answer that question.</p> <p>25 Q. Right. And do you understand that that</p>	<p style="text-align: right;">Page 60</p> <p>1 abnormality or a positive B Read when they look at 2 CARD patient films?</p> <p>3 A. No, I don't know.</p> <p>4 Q. Okay. So --</p> <p>5 A. I'm not a doctor.</p> <p>6 Q. Understood. And Senator Baucus, if it 7 turned out that when B Reading physicians were 8 looking for abnormalities, they would note all 9 abnormalities, not just asbestos-related 10 abnormalities in their reports?</p> <p>11 A. What's the question?</p> <p>12 Q. Were you aware of that?</p> <p>13 A. No.</p> <p>14 Q. Okay. Sir, were you aware that a 15 positive B Read may indicate abnormalities like 16 emphysema or COPD or a history of smoking 17 cigarettes?</p> <p>18 A. I have no idea. All I know is if there's 19 a -- a doctor found a positive indication of 20 asbestos, irrespective of emphysema or the others, 21 asbestos, that's sufficient.</p> <p>22 Q. All right. Sir, are you aware that when 23 B Readers send their B Read reports back to CARD, 24 there isn't any indication on that form that says 25 whether or not that B Reader believes the patient</p>

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<p style="text-align: right;">Page 61</p> <p>1 has an asbestos-related disease?</p> <p>2 A. I think that's accurate. I think that's 3 accurate.</p> <p>4 Q. All right. So a doctor, a B Reading 5 physician, may send a report back to CARD that 6 merely says there's an abnormality of emphysema. 7 Are you aware of that possibility?</p> <p>8 MR. BECHTOLD: Foundation.</p> <p>9 THE WITNESS: I'm also aware of the statute that says 10 if a B Read -- if The B Reader determines a positive 11 indication, the statute stays that, in effect, that it 12 sufficient for coverage.</p> <p>13 Q. (By Mr. Duerk) All right. And, sir, I 14 understand that that's what your testimony is here 15 today. And it's not your intent to have a B Reader 16 find that a patient has no asbestos-related disease 17 and still be submitted for Medicare coverage, 18 correct?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. During your deposition last time, 21 we talked about a hypothetical involving a patient 22 with a fractured rib. Sir, I'll represent to you 23 that a fractured rib shows up as an abnormality on a 24 B Read. Do you have any reason to disagree with 25 that?</p>	<p style="text-align: right;">Page 63</p> <p>1 fraudulent, correct?</p> <p>2 A. Well, fraud is intent. So there may not 3 be intent to defraud. It could be a mistake. It 4 could be oversight. So I don't know if that's fraud 5 or not. That's a legal determination.</p> <p>6 Q. Sir, I'll go ahead and go about it this 7 way. I'm going to play for you video clip 11. 8 Please tell me if this is an accurate reflection of 9 your testimony.</p> <p>10 A. I suppose it's in here in the deposition.</p> <p>11</p> <p>12 (Whereupon, Clip No. 11 was 13 played for the jury)</p> <p>14</p> <p>15 Q. (By Mr. Duerk) Did that accurately 16 reflect your sworn testimony?</p> <p>17 A. Yes.</p> <p>18 Q. All right. And, sir, have you ever seen 19 any correspondence from the CARD Clinic where the 20 CARD Clinic indicated to its own patients that the 21 patient did not have a diagnosis of asbestos-related 22 disease and yet they were submitting that patient 23 for Medicare benefits for life anyway?</p> <p>24 A. I'm unaware.</p> <p>25 Q. Did you ever see any correspondence from</p>
<p style="text-align: right;">Page 62</p> <p>1 A. I have no reason to agree or disagree. I 2 just have no -- I'm not competent to answer that 3 question.</p> <p>4 Q. In your mind, if a patient suffered from 5 a fractured rib, but no signs of asbestos-related 6 disease, would it be proper to submit that patient 7 for lifetime Medicare benefits when they are not 8 sick with asbestos-related disease?</p> <p>9 A. It would not be proper.</p> <p>10 Q. Right. Sir, in terms of that fractured 11 rib patient, we discussed that hypothetical during 12 your deposition in July of last year, right?</p> <p>13 A. I vaguely remember all of us talked about 14 fractured ribs, yes.</p> <p>15 Q. Okay. So, in your mind, in patients with 16 a rib fracture, if a doctor had submitted Medicare 17 claims for patients knowing that those individual 18 patients did not have a diagnosis of 19 asbestos-related disease, you would find that 20 problematic?</p> <p>21 A. Right.</p> <p>22 Q. In fact, if a doctor submitted patients 23 with a rib fracture or other non-related asbestos -- 24 or problems not related to asbestos for lifetime 25 Medicare benefits, you would find that to be</p>	<p style="text-align: right;">Page 64</p> <p>1 the CARD Clinic where CARD indicated to the patient 2 that a B Reader found an abnormality but this had no 3 indication of any health condition that should cause 4 the patient any concern but the patient was still 5 being submitted for Medicare benefits?</p> <p>6 A. I'm not aware of any.</p> <p>7 Q. Were you aware, sir, that in over 100 8 individual patient cases, CARD told the patient that 9 they didn't have a diagnosis of asbestos-related 10 disease from CARD or anywhere else, that the patient 11 did have an abnormality that was identified by an 12 outside Reader, but that that abnormality was 13 nothing that had significant health implications nor 14 is it considered a diagnosis of asbestos-related 15 disease?</p> <p>16 MR. BECHTOLD: Misstates the testimony.</p> <p>17 THE WITNESS: I'm unaware of anything.</p> <p>18 Q. (By Mr. Duerk) Okay. And would that 19 cause concern in your mind?</p> <p>20 A. I would have to have more information.</p> <p>21</p> <p>22 (Pause)</p> <p>23</p> <p>24 Q. Doctor, we also talked about a different 25 kind of hypothetical in your July 2022 deposition</p>

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<p>1 that I'd like to cover that today, okay? Last 2 summer, we talked about a hypothetical patient who 3 went to the -- goes to a clinic to determine whether 4 or not there's a diagnosis of asbestos-related 5 disease. And during that time frame, the patient is 6 never found to have signs of an abnormality on 7 either a chest x-ray or a CT scan by any 8 radiologist.</p> <p>9 In this hypothetical, the patient returns 10 to the clinic year after year after year, and his CT 11 scans and his chest x-rays are read by radiologists, 12 thoracic radiologists, pulmonologists, and every 13 single time, over a multi-year period, that patient 14 is always negative for asbestos-related disease.</p> <p>15 If that patient were submitted for 16 Medicare benefits, would that concern you?</p> <p>17 A. Yes.</p> <p>18 Q. Why?</p> <p>19 A. Because the statute is not intended -- 20 the statute is not intended to cover a person in 21 that situation. Although I will say, that often, as 22 I understand it, even though I'm not a doctor, that 23 the disease often is not detected in the early 24 stages but can be detected at later stages in 25 subsequent years.</p>	<p>1 Q. All right. Now, I'd like you to look at 2 page 62 of your deposition.</p> <p>3 A. What tab is that again?</p> <p>4 Q. Sorry, it's tab 20. It's behind tab 20.</p> <p>5 There we go. I'm looking at page 62. I'm looking 6 at line 7.</p> <p>7 A. Okay.</p> <p>8 Q. I'm starting at line 7.</p> <p>9 Let's go into a separate hypothetical.</p> <p>10 Assume there's the same doctor who sees a patient 11 and that patient had some experience in Libby, 12 Montana, so that they were in Libby for the 13 requisite period of time, and the doctor sent that 14 patient's x-rays and CT scans out for a read from 15 either a B Reader or a thoracic radiologist, a 16 pulmonologist, someone with experience reading 17 films, and all of those films, all of those chest 18 x-rays came back as negative for asbestos-related 19 disease; not just once, but multiple times, year 20 after year.</p> <p>21 Assuming there was no outside evidence 22 according to radiologists and outside experts 23 showing any signs consistent with asbestos-related 24 disease, would you find it problematic if that 25 doctor submitted that patient for Medicare benefits?</p>
<p>1 Q. Understood. With this hypothetical 2 patient, I'd like for you to assume that they were 3 scanned starting in 2013 -- I'm sorry, starting in 4 2015, and they were scanned in 2016 and 2017. 5 Ultimately, that patient was sent to the Mayo 6 Clinic, and not only was the patient scanned again 7 at the Mayo Clinic, but the radiologists at Mayo 8 went back and reviewed all prior scans.</p> <p>9 In this hypothetical, the Mayo Clinic 10 found no signs of asbestos-related disease during 11 the current scan, the most recent scan, but also no 12 signs of asbestos-related disease going all the way 13 back to the patient's earliest scan.</p> <p>14 If that patient were submitted for 15 Medicare benefits, would it concern you?</p> <p>16 MR. BECHTOLD: Foundation.</p> <p>17 THE WITNESS: Well, that's not this case. That's a 18 hypothetical. And I just -- it's hard to deal with 19 hypotheticals.</p> <p>20 Q. (By Mr. Duerk) I understand. I would 21 like you to assume that that hypothetical is true.</p> <p>22 A. Of course you would. For your purposes, 23 yes. I can't -- I just don't know. It's a 24 hypothetical. I can't -- it's hard for me to answer 25 a hypothetical.</p>	<p>1 Answer, yeah, if there's no basis for finding a 2 disease, yeah.</p> <p>3 Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. Now, we talked about -- or Mr. Bechtold 6 talked about outside pulmonologists and outside 7 radiologists and outside doctors not necessarily 8 understanding Libby asbestos and asbestos-related 9 disease from Libby's asbestos, do you remember your 10 testimony there?</p> <p>11 A. Yeah.</p> <p>12 Q. And I believe we looked at some 13 congressional testimony about doctors outside of 14 Libby really not understanding the problem; is that 15 right?</p> <p>16 I believe that testimony on the 17 Congressional Record was given in support of the 18 changes in the Affordable Care Act, correct?</p> <p>19 A. I don't know about changes. They 20 supported the provision that was put in there.</p> <p>21 Q. Correct. I'm sorry, the provision that 22 was to be put in the act. And I think we could 23 probably determine when that -- when you gave that 24 testimony or when --</p> <p>25 A. Oh, yeah it would be in there.</p>

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<p style="text-align: right;">Page 73</p> <p>1 doctor who has read the CT scan and the chest x-ray, 2 the doctor who completed the patient assessment, the 3 doctor who reviewed the exposure history of the 4 patient, the diagnosing physician, if that doctor 5 says to the patient, you're not sick, you don't have 6 asbestos-related disease, based on your 7 understanding of the Affordable Care Act, would it 8 be proper for that patient to be submitted for 9 Medicare benefits?</p> <p>10 A. Are we talking about generally? Are we 11 talking about this Libby, the Libby cases? What are 12 we talking about?</p> <p>13 Q. Libby Cases.</p> <p>14 A. No, that's -- the question is way too 15 long. I couldn't remember it all. Can you ask a 16 simpler question?</p> <p>17 Q. Sure. If we've got the doctor with the 18 most --</p> <p>19 A. Now, we're talking about Libby?</p> <p>20 Q. We're talking about Libby.</p> <p>21 A. Okay.</p> <p>22 Q. If the doctor with the most information, 23 who's seen the CT scans, he's read and interpreted 24 them, if the doctor who has taken the exposure 25 history, who's done the inpatient assessment, if</p>	<p style="text-align: right;">Page 75</p> <p>1 the exposure history of the patient, the diagnosing 2 physician in this instance says, quote, you are not 3 sick, you don't have asbestos-related disease." 4 Based on your understanding of the Affordable Care 5 Act, would it be proper for that patient to be 6 submitted for Medicare benefits?</p> <p>7 A. That's what I said there, but since then 8 I've gone back --</p> <p>9 Q. Sorry, I'm not done.</p> <p>10 A. Okay, go ahead.</p> <p>11 Q. Answer, if the patient does not have 12 disease, the answer is no.</p> <p>13 Did I read that correctly?</p> <p>14 A. You did, but I'm going to say that that 15 we have more facts now. And as an expert witness, 16 I'm supposed to have more facts, and I have more 17 facts. And when I went back and read the statute 18 and refreshed my recollection for the statute, so 19 that's why my answer is not -- will be different now 20 than what I said then.</p> <p>21 Q. The question that I asked you back then 22 starting on line 22, page 58, and so consistent with 23 the original purpose of the --</p> <p>24 A. I'm sorry, where are you?</p> <p>25 Q. Page 58, line 22.</p>
<p style="text-align: right;">Page 74</p> <p>1 that doctor seeing all of the information tells the 2 patient, you're not sick, you don't have 3 asbestos-related disease, should that patient be 4 submitted for Medicare?</p> <p>5 A. Might. Yes, possibly.</p> <p>6 Q. Might? Why?</p> <p>7 A. Because it was a different doctor. A 8 different doctor is involved here. The statute says 9 you're either diagnosed by CARD or by a B Reader. 10 Technically, the term diagnosis is not usable in a B 11 Reader, so it depends. The point here in the 12 statute is not to narrow the determination down to 13 one doctor and one doctor's decision only.</p> <p>14 Q. Okay. Let's look at page --</p> <p>15 A. So that's why I asked the question the 16 way I did.</p> <p>17 Q. Sure. Let's look at page 58, lines 8.</p> <p>18 A. 58.</p> <p>19 Q. Line 8.</p> <p>20 A. Yeah.</p> <p>21 Q. "Within the context of this hypothetical, 22 let's say that the doctor with the most information, 23 the diagnosing physician, the doctor who has the CT 24 scan and the chest x-ray, the doctor who's completed 25 an inpatient assessment, the doctor who's reviewed</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Okay.</p> <p>2 Q. And so consistent with the original 3 purpose of the EHH provisions and the Affordable 4 Care Act, without a diagnosis, that patient 5 shouldn't be deemed Medicare eligible. Your answer, 6 without a diagnosis, that's correct.</p> <p>7 That's what you said last year under 8 oath, correct?</p> <p>9 A. That's what I said back then.</p> <p>10 Q. All right.</p> <p>11 A. But I'm -- it's more complicated than 12 you're implying there.</p> <p>13 Q. Senator Baucus, in your mind, would it 14 ever be proper to knowingly submit a patient for 15 Medicare benefits when the physician knew that 16 patient wasn't sick with an asbestos-related 17 disease?</p> <p>18 A. It would problematic. Again, I would 19 want more facts.</p> <p>20 Q. Right. And you've described that 21 scenario in the past as fraud, correct?</p> <p>22 A. I've used the word in the prior 23 deposition, and it would be fraudulent with all 24 things considered if both the B Reader and, in my 25 hypothetical, both the B Reader and the CARD</p>

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<p style="text-align: right;">Page 77</p> <p>1 physician intentionally knew there was no disease, 2 that would be fraud.</p> <p>3 Q. Right. Right. So if the B Reader saw 4 that the patient didn't have an asbestos-related 5 disease, but instead chronic obstructive pulmonary 6 disease and CARD knew that, and they submitted a 7 Medicare claim form for lifetime health care 8 benefits anyway, that would be fraud, right?</p> <p>9 A. I don't know. I'd have to have the 10 facts. I can't answer that question. That's way 11 too complicated; too many subsections to that 12 question.</p> <p>13 Q. In terms of the facts in this case, did 14 you ask for more facts before you rendered your 15 expert witness opinions in this matter?</p> <p>16 A. Did I ask for more facts?</p> <p>17 Q. Yes.</p> <p>18 A. I asked myself and went back and I 19 refreshed my recollection of the statutes and my 20 recollection.</p> <p>21 Q. Did CARD provide you with more facts?</p> <p>22 A. No.</p> <p>23 Q. Did CARD provide you with any medical 24 records related --</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 79</p> <p>1 that testimony that you've heard about before?</p> <p>2 A. I have not heard about anything about</p> <p>3 that.</p> <p>4 Q. All right. And if there was a patient 5 who did actually fall into that category who has 6 been told by CARD repeatedly, you are not sick, you 7 don't have asbestos-related disease, and, yet, CARD 8 submitted her for Medicare benefits for life so that 9 she could get gym membership paid for by the people 10 of the United States, would you find that</p> <p>11 problematic?</p> <p>12 A. I find it concerning, but I need more 13 facts before making a decision.</p> <p>14 Q. Right. And in terms of the facts related 15 to this case, aside from your declaration and the 16 exhibits that I learned you were going to be talking 17 about today, you haven't seen any other written 18 information about those CARD patients, fair?</p> <p>19 A. That's true.</p> <p>20 Q. Okay. Sir, I apologize if any of my 21 questions seem disrespectful here, but what I'm 22 trying to get at is, I do appreciate the work that 23 you've done for the people of Libby. I do. But is 24 it benefitting the people of Libby if there's fraud 25 in the system being perpetrated by CARD to let that</p>
<p style="text-align: right;">Page 78</p> <p>1 Q. Did they provide you with any medical 2 records related to any of the individual CARD 3 patients that are the subject of the false claims 4 act case here?</p> <p>5 A. No.</p> <p>6 Q. Okay. In terms of the Complaint itself, 7 the Amended Complaint, have you seen what the 8 precise allegations are against the CARD claim?</p> <p>9 A. No. I just want to help people in Libby. 10 That's my concern.</p> <p>11 Q. I understand. And you understand, sir, 12 that this case is not about the people in Libby who 13 are sick with an asbestos-related disease. This 14 fraud case is a case about the people in Libby who 15 are not sick. Do you understand that?</p> <p>16 A. No.</p> <p>17 Q. Okay. Okay. That's helpful. So if I 18 were to tell you that there is deposition testimony 19 from CARD patients who have said under oath that 20 they are aware, one patient in particular I'm 21 thinking of, has stated she's aware that she doesn't 22 have an asbestos-related disease because CARD told 23 her she doesn't have an asbestos-related disease, 24 and, yet, nevertheless, she's still getting gym 25 membership benefits under the Medicare program. Is</p>	<p style="text-align: right;">Page 80</p> <p>1 fraud continue?</p> <p>2 A. I'm unaware of any fraud.</p> <p>3 Q. I'm well aware of that. However, my 4 question stands, does it benefit anybody in Libby if 5 there's fraud in the way that CARD submits people 6 for Medicare benefits to let that practice continue?</p> <p>7 A. I'm against fraud.</p> <p>8 Q. Understood. And you have not seen any of 9 the evidence of fraud in this case?</p> <p>10 A. Correct.</p> <p>11 Q. Okay. So is it fair to say that without 12 seeing any evidence of the alleged fraudulent 13 conduct in this case, you wouldn't be able to make 14 up your mind one way or another whether fraud had 15 occurred?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And CARD has not provided you with 18 any evidence other than what we've looked at on the 19 record today, is that fair?</p> <p>20 A. Right.</p> <p>21 Q. Okay.</p> <p>22 MR. DUERK: If we could talk a short break, I might 23 be able to figure out how to shorten this up.</p> <p>24 VIDEO OPERATOR: We're going off the record. The 25 time is 12:14 p.m.</p>

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<p>1 (Whereupon a recess was taken)</p> <p>2</p> <p>3</p> <p>4 VIDEO OPERATOR: We are back on the record. The time</p> <p>5 is 12:28 p.m.</p> <p>6 Q. (By Mr. Duerk) Senator Baucus, I would</p> <p>7 like you to look at what I'll mark as Exhibit 160 in</p> <p>8 this case. It's at tab 24 in your binder.</p> <p>9</p> <p>10 (Deposition Exhibit No. 160 was marked</p> <p>11 for identification)</p> <p>12</p> <p>13 Q. (By Mr. Duerk) Sir, if you would look at</p> <p>14 page 2 of Exhibit 160.</p> <p>15 A. Yep.</p> <p>16 Q. Do you see an e-mail from Tanis Hernandez</p> <p>17 at the top and a number of other individuals?</p> <p>18 A. I do, down at the bottom.</p> <p>19 Q. Yep. The subject is Baucus mailing?</p> <p>20 A. Yep.</p> <p>21 Q. Sir, I can't imagine that you have seen</p> <p>22 this e-mail before, but what I'm hoping to do is</p> <p>23 show you this e-mail to try to refresh your</p> <p>24 recollection about the subject here, it says Baucus</p> <p>25 mailing.</p>	<p>1 for identification)</p> <p>2</p> <p>3 Q. (By Mr. Duerk) Do you see what appears</p> <p>4 to be the mailing referenced in the prior e-mails</p> <p>5 with your signature on it?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Does the website at the bottom of</p> <p>8 the page, www.baucus.senate.gov, is that your -- was</p> <p>9 that one of your e-mails?</p> <p>10 A. I presume.</p> <p>11 Q. Okay. And does this appear to be a true</p> <p>12 and accurate copy of a mailing entitled, Dear</p> <p>13 Friends that was sent out --</p> <p>14 A. As near as I can tell, yes.</p> <p>15 Q. Okay.</p> <p>16 MR. DUERK: So I would move to admit this exhibit.</p> <p>17 Q. (By Mr. Duerk) If you would please start</p> <p>18 from the beginning and just read this mailing, that</p> <p>19 would be helpful, Senator.</p> <p>20 A. "I'm so pleased to be writing you after</p> <p>21 the passage of the health care reform bill that</p> <p>22 would lower costs and provide quality affordable</p> <p>23 health coverage to all Montanans. In addition, the</p> <p>24 Patient Protection and Affordable Care Act sets up a</p> <p>25 new system for screenings and medical care for</p>
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p style="text-align: right;">Page 85</p> <p>1 or medical care for asbestos-related disease can 2 enroll in the FLASH program, the Federal Libby 3 Asbestos Special Healthcare program, funded with the 4 \$6 million grant from the Department of Health and 5 Human Services that I secured in '09. This program 6 will provide coverage for services that are not 7 covered by other insurance or asbestos-related 8 disease programs. For details on how to enroll, 9 contact my office toll free at (800) 332-6106, or in 10 Kalispell at (406) 756-1150."</p> <p>11 Q. And, sir, is that your signature on this 12 mailer?</p> <p>13 A. It is. Well, it looks like it.</p> <p>14 Q. Looks like it. I would like to look at 15 the bottom of the page in Exhibit 161 and see if you 16 know the source of it. First, I'll read it to you 17 and tell me if I've read it correctly.</p> <p>18 "If you: 19 1) Have an asbestos-related disease 20 diagnosed by a medical provider; 21 2) Are NOT on Medicare; 22 3) Call 1-888-482-3128 and say. 23 'I want to sign up for Medicare coverage 24 due to my asbestos-related disease that resulted 25 from the Libby, Montana asbestos exposure.'"</p>	<p style="text-align: right;">Page 87</p> <p>1 have an asbestos-related disease diagnosed by a 2 medical provider, correct?</p> <p>3 A. Right.</p> <p>4 Q. All right. And in terms of the 5 conversation we've had back and forth, the provider 6 is the doctor or the healthcare facility --</p> <p>7 A. Right.</p> <p>8 Q. -- itself, correct?</p> <p>9 Nowhere on your mailing or this 10 handwritten note does it indicate that individuals 11 are eligible for Medicare based on a radiographic 12 report alone, correct?</p> <p>13 A. No, but that's the reason for the 14 telephone number, to get the facts.</p> <p>15 Q. Right. And when the Social Security 16 Administration is called about those facts, the 17 first fact that needs to be established is that the 18 patient has an asbestos-related disease diagnosed by 19 a medical provider, correct?</p> <p>20 A. Generally. I mean, it's -- the main 21 point is, the statute is there to help people. The 22 mailing's sent out to give notice, and here's a 23 telephone number to see if you qualify.</p> <p>24 Q. Right. Based on all of the material that 25 I've seen about Medicare benefits from your office,</p>
<p style="text-align: right;">Page 86</p> <p>1 First, did I read that correctly?</p> <p>2 A. Yes, you did.</p> <p>3 Q. Okay. And, sir, in terms of this 4 mailing, was this consistent with the messaging that 5 was being sent out to the people of Libby about the 6 passage of the Affordable Care Act?</p> <p>7 A. It's consistent, yeah.</p> <p>8 Q. Okay. And, sir, in terms of the 9 handwritten language there, is this also consistent 10 with what your understanding is about the way the 11 patients would report their condition to the Social 12 Security Administration to get Medicare coverage?</p> <p>13 A. It's a good start.</p> <p>14 Q. Okay. And to the best of your knowledge, 15 what else is required to submit to the Social 16 Security Administration to get Medicare coverage?</p> <p>17 A. Well, I don't know. I never brought it.</p> <p>18 Q. Do you have any understanding of what 19 CARD would submit in support of Medicare benefits 20 for its patients?</p> <p>21 A. No, I just trust them to do the right 22 thing.</p> <p>23 Q. And, at least, according to the e-mail 24 that we see and your mailing, it says that CARD 25 patients should report to Social Security if they</p>	<p style="text-align: right;">Page 88</p> <p>1 all of that material indicates that in order to get 2 Medicare, the person has to be sick due to 3 asbestos-related disease, is that your 4 understanding?</p> <p>5 A. Basically, yeah.</p> <p>6 Q. Yeah. And I've never seen, sir, a 7 mailing from your office that indicates that 8 patients who aren't sick due to an exposure to Libby 9 asbestos are eligible for Medicare, is that your --</p> <p>10 A. You've said you've never seen it, and I 11 trust you.</p> <p>12 Q. I haven't. But let me ask it this way. 13 Are you aware of any communication --</p> <p>14 A. No.</p> <p>15 Q. Sorry. Just for the record, I've got to 16 ask my question. But are you aware of any 17 communications sent by your office that told 18 individuals in Libby that they were eligible for 19 Medicare without being sick due to an exposure to 20 Libby asbestos?</p> <p>21 A. No.</p> <p>22 Q. Okay. And in terms of the communication 23 that you've received from CARD that you're aware of, 24 have you ever received any communication from CARD 25 that indicated to you that CARD was submitting</p>

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<p>1 patients for Medicare benefits who CARD knew were 2 not sick due to an exposure to asbestos-related 3 disease? 4 A. I'm not aware of anybody. Nothing 5 provided. 6 Q. In terms of any communications from 7 Medicare or the Social Security administration -- 8 I know you know where I'm going, but I'll ask the 9 question -- have you ever seen any communication 10 from the Social Security Administration that 11 indicated that Social Security was okay giving 12 Medicare benefits to people that CARD and everyone 13 else knew were not sick with asbestos-related 14 disease? 15 A. No, I've never seen anything like that. 16 Q. And it is not your testimony here today 17 that it is okay for somebody without an 18 asbestos-related disease to get lifetime Medicare 19 benefits unless they've been exposed to Libby 20 asbestos and are actually sick with asbestos-related 21 disease due to that exposure, correct? 22 A. Correct. 23 MR. DUERK: Sir, thank you for your time today. I 24 have no further questions at this point. 25 MR. BECHTOLD: I just have a couple follow-ups.</p>	<p>1 that a diagnosis under the Act? 2 MR. DUERK: Objection, foundation, form, 3 nondisclosure, also calls for a legal interpretation. Go 4 ahead. 5 THE WITNESS: It's not -- it's technically not a 6 diagnosis, but it's sufficient for coverage. 7 Q. (By Mr. Bechtold) And you wrote the Act, 8 right? 9 A. Yes. 10 Q. And that was your intention? 11 A. Yes. B Readers positive -- a different 12 name -- a positive determination and it's 13 sufficient. 14 MR. BECHTOLD: Nothing further. Thank you. 15 VIDEO OPERATOR: That concludes this deposition. The 16 time is 12:42 p.m. 17 18 (Whereupon, the deposition concluded at 19 12:42 p.m. for the day) 20 21 (Signature waived) 22 23 24 25</p>
<p>Page 90</p>	<p>Page 92</p>

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Attorneys for CARD

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BNSF,

Plaintiff

vs.

CARD,

Defendant.

CV-19-40-M-DLC

**CARD'S INITIAL
DISCLOSURE SECOND
SUPPLEMENT**

**I. INDIVIDUALS WITH DISCOVERABLE INFORMATION WHOM
CARD MAY USE TO SUPPORT ITS CLAIMS AND DEFENSES**

1. Brad Black, CARD
2. Tracy McNew, CARD
3. Jim Lockey, Professor Emeritus, University of Cincinnati
4. Albert Miller, Professor of Clinical Medicine, Mt Sinai School of Medicine
5. Tanis Hernandez, former administrative director at CARD
6. Henry Falk, former HHS

7. Cheryl Everhart, HHS
8. Theodore Larson, HHS
9. Max Baucus, former US Senator
10. Sonia Hymas, former SSA
11. Mary Lewandowski, SSA
12. Terra Whiteman, SSA
13. Art Frank, Drexel University
14. Jaime Szeinuk, Northwell
15. Jimmie Sevre, Kalispell, 406-314-0659, CARD patient
16. Gayla Benefield, Libby, 406-291-0376, CARD patient
17. Judy Woller, Ft. Mojave, AZ, 928-788-1755, CARD patient
18. Stephanie Shaw, CARD
19. Chris Ekstedt, CARD
20. Lee Morrissette, MD, CARD

**II. DESCRIPTION OF DOCUMENTS AND TANGIBLE THINGS IN
CARD'S POSSESSION THAT IT MAY USE TO SUPPORT ITS
CLAIMS**

1. Documents CARD produced to DHHS OGC

III. COMPUTATION OF DAMAGES

CARD does not believe that an award of damages is appropriate in this matter.

IV. INSURANCE AGREEMENTS

CARD has no insurance coverage for this action.

DATED May 8, 2023.

/s/ Timothy M. Bechtold
BECHTOLD LAW FIRM, PLLC

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing via email attachment on May 8, 2023, upon the following:

Adam Duerk
283 W. Front Street, Suite 203
Missoula, Montana 59802
duerk@knightnicastro.com

/s/Timothy M. Bechtold

EXHIBIT 5

Relator will supplement the record with a certified copy
of the Excerpts of Transcript.

UNCERTIFIED DRAFT REALTIME TRANSCRIPT
NOT TO BE USED FOR VERBATIM CITATION

1 BNSF v. CARD, CV 19-40-M-DLC
2 HEARING ON MOTIONS - MONDAY, SEPTEMBER 12, 2022

3 **REALTIME TEXT NOTICE**

4 We, the party working with the court reporter's
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13 We further understand that the realtime text will
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15 comparing the realtime text to the certified transcript.

16 We further understand that the realtime text may
17 contain untranslated steno, reporter's notes in parentheses,
18 misspelled proper names, incorrect or missing Q/A symbols or
19 punctuation, and/or nonsensical English word combinations.
20 All such entries will be corrected on the certified
21 transcript.

22 The certified transcript is the only official
23 transcript which may be relied upon for the purposes of
24 verbatim citation and is the only transcript which will be
25 efiled in the case docket.

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1 purposes of this form, they don't consider a diagnosis a
2 clinical diagnosis. They just consider it the minimal medical
3 evidence required to have someone qualify for Medicaid --
4 Medicare. Excuse me.

5 So, again, I'm not sure why SSA didn't do a separate
6 form for B-read-only, but this is what they did.

7 THE COURT: Okay.

8 MR. BECHTOLD: And so -- and furthermore, I mean,
9 they directed CARD to fill it out this way.

10 So I think when we're talking about the elements of
11 the False Claims Act, you know, one of the most important
12 things for materiality is how the government responds to what
13 CARD has been doing.

14 CARD has been doing these environmental health
15 hazard checklists 12 years the way SSA told them to, and
16 obviously there's been many instances where the CARD staff
17 have been informed, you know, the SSA staff, that this was a
18 B-read-only. And so it's not a surprise to CARD -- I mean, to
19 SSA staff that there are B-read onlys, qualifications under
20 the HH checklist.

21 So, you know, a couple documents. Docket No. 80-40,
22 80-41, 80-42 are several emails back and forth between SSA and
23 CARD staff where they show that it's B-read-only. So the SSA
24 staff are fully aware that these EHH forms are occasionally,
25 or pretty often based only on outside positive read and not by

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1 staff would certainly say: Well, that's not right. You know,
2 having been aware of, through these two separate
3 investigations, that this is what CARD was doing, it was no
4 surprise to them because CARD had been doing it all along.

5 THE COURT: So, Mr. Bechtold, back to the question I
6 asked about *scienter*. That all may be true, but how do I make
7 that determination as a matter of law? Isn't that a factual
8 issue for the jury to resolve?

9 MR. BECHTOLD: The actual behavior of the SSA?

10 THE COURT: And what, what they knew. Now you said
11 they conducted investigations and they may know a lot. But
12 you're asking me to decide, as a matter of law, that they knew
13 enough to get over the materiality hurdle.

14 MR. BECHTOLD: Well, I think that's the actual
15 behavior hurdle from *Escobar*.

16 THE COURT: Right.

17 MR. BECHTOLD: So what did they actually do? What
18 did they actually do is keep accepting those B-read-only HH
19 forms and processing people for Medicare. So what's what
20 their actual behavior is.

21 So they know. And, believe me, CARD staff has been
22 in contact with the SSA virtually, you know, every week for
23 years. SSA staff know that this, that this is part of the
24 lawsuit. They know these issues, and they still keep
25 accepting it.

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1 So, Your Honor, just because CARD relied on all
2 those B-readers for all those forms, all they were doing is
3 following the law. And that's what SSA told them to do, and
4 that's what they've done ever since 2010, and every part of
5 the government is aware of that, and every part of the
6 government sustains it. It can't be a false claim when
7 everything that the CARD is doing is approved by the
8 government. It doesn't make sense.

9 Thanks.

10 THE COURT: All right. The matter is fully
11 submitted.

12 I came into this hearing this afternoon, after
13 having read a tremendous amount in this case, with the
14 impression that probably summary judgment was not going to be
15 granted, as you both requested, on the part of either party
16 and that we're going to have a trial in this case.

17 I will carefully consider all of the arguments that
18 have been made. I will be provided with a rough draft of the
19 transcript. We'll reread it. But I remain of the opinion
20 that most likely we're going to have a trial in this case.
21 Now what we try is yet to be determined.

22 I have, before me, two other cases that are set to
23 go to trial in October and early December that have a pile of
24 motions in them that I need to get to before I get to this, so
25 don't hold your breath, expecting you're going to get a ruling

From: Stephanie Shaw <sshaw@libbyasbestos.org>
Sent: Tuesday, April 11, 2023 8:56 AM
To: Tracy Mcnew <tracy@libbyasbestos.org>; Karen Lee Morrissette <lee@libbyasbestos.org>
Subject: FW: EHH Medicare

Good Morning Ladies,

Please see below information on B_read EHH's. I will let you know once I have established a meeting with Medicare to ensure you can attend as well.

Stephanie

From: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Sent: Thursday, April 6, 2023 1:15 PM
To: Stephanie Shaw <sshaw@libbyasbestos.org>
Subject: EHH Medicare

Good Afternoon Stephanie.

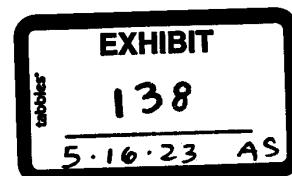
I appreciate you taking the time to discuss your processes earlier today. I relayed the information to my regional office and because you are telling me that CARD does not consider the individual diagnosed based on an interpretation by a B reader, we are unable to approve EHH Medicare claims involving the B reader at this time. Someone from our agency or Medicare will be reaching out directly in the next couple of weeks.

Thank you.

Terra Whiteman, District Manager
Social Security Administration
Kalispell, MT FO 872



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From: Stephanie Shaw <sshaw@libbyasbestos.org>
Sent: Thursday, April 06, 2023 9:21 AM
To: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Subject: [EXTERNAL] RE: EHH Medicare

I got caught on a phone call with Pilot, will call as soon as I am done.

Stephanie

From: Stephanie Shaw
Sent: Thursday, April 6, 2023 8:20 AM
To: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Subject: RE: EHH Medicare

Good Morning ☺

I am in, but can only be transferred to the VM because it is after hours. I will call right at 9AM ☺

Stephanie

From: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Sent: Wednesday, April 5, 2023 5:10 PM
To: Stephanie Shaw <sshaw@libbyasbestos.org>
Cc: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Subject: EHH Medicare

Good Afternoon.

I would like to try to connect with you if possible tomorrow sometime. I will be in the office from 7:00 – 3:30. If you can call on the EHH line when it is convenient for you that would be great. Thank you.

Terra Whiteman, District Manager

Social Security Administration

Kalispell, MT FO 872



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From: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Sent: Friday, April 28, 2023 8:53 AM
To: Tracy Mcnew <tracy@libbyasbestos.org>
Cc: Stephanie Shaw <sshaw@libbyasbestos.org>; Karen Lee Morrissette <lee@libbyasbestos.org>; Pam Martens <pmartens@libbyasbestos.org>
Subject: FW: EHH Medicare and CARD

Good Morning.

I have forwarded this information on to our Center for Program Support.

Thank you.

Terra Whiteman, District Manager
Social Security Administration
Kalispell, MT FO 872



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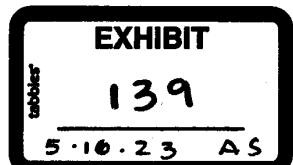
From: Tracy Mcnew <tracy@libbyasbestos.org>
Sent: Thursday, April 27, 2023 3:30 PM
To: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Cc: Stephanie Shaw <sshaw@libbyasbestos.org>; Karen Lee Morrissette <lee@libbyasbestos.org>; Pam Martens <pmartens@libbyasbestos.org>
Subject: RE: [EXTERNAL] EHH Medicare and CARD

Terra,

If SSA has not changed any of its rules, CARD will continue to submit EHH checklists for patients based solely on positive B reads and outside CT reads as it has in the past. I've attached a document that explains CARD's diagnostic methods and how there are two versions - clinical (CARD provider diagnoses) and non-clinical (B-read or outside CT read only). Please let me know if you have any questions or if you don't want us to submit the non-clinical diagnosis EHH forms.

Tracy

Tracy McNew, LPN, MPA



Executive Director
Center for Asbestos Related Disease
214 East 3rd Street
Libby, MT 59923
(406) 293-9274 ext. 126
www.libbyasbestos.org

From: Tracy Mcnew
Sent: Wednesday, April 26, 2023 4:59 PM
To: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Cc: Stephanie Shaw <ssshaw@libbyasbestos.org>; Karen Lee Morrissette <jee@libbyasbestos.org>; Pam Martens <pmartens@libbyasbestos.org>
Subject: RE: [EXTERNAL] EHH Medicare and CARD

Thank you, Terra.
Tracy

Tracy McNew, LPN, MPA
Executive Director
Center for Asbestos Related Disease
214 East 3rd Street
Libby, MT 59923
(406) 293-9274 ext. 126
www.libbyasbestos.org

From: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Sent: Wednesday, April 26, 2023 2:47 PM
To: Tracy Mcnew <tracy@libbyasbestos.org>
Cc: Stephanie Shaw <ssshaw@libbyasbestos.org>; Karen Lee Morrissette <jee@libbyasbestos.org>; Pam Martens <pmartens@libbyasbestos.org>
Subject: RE: [EXTERNAL] EHH Medicare and CARD

Good Afternoon Tracy

I wanted to get you an interim answer to this email. I think there may be confusion. Stephanie reached out to SSA and made us aware that CARD does not consider the patients as diagnosed despite signing off on the checklist when a B reader is involved. SSA has not changed any of its rules.

I am forwarding your information to our Center for Program Support so they can address any of your concerns. I will have them reach out to you directly. Thank you.

Terra Whiteman, District Manager
Social Security Administration

Kalispell, MT FO 872



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and tomorrow

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*Open a **my Social Security** account today at www.socialsecurity.gov/myaccount.*

From: Tracy Mcnew <tracy@libbyasbestos.org>
Sent: Wednesday, April 12, 2023 8:33 AM
To: Whiteman, Terra <Terra.Whiteman@ssa.gov>
Cc: Stephanie Shaw <ssshaw@libbyasbestos.org>; Karen Lee Morrissette <lee@libbyasbestos.org>; Pam Martens <pmartens@libbyasbestos.org>
Subject: [EXTERNAL] EHH Medicare and CARD

Hi Terra,

My name is Tracy McNew, I am the Executive Director of the CARD Clinic. Thanks for your email to Stephanie Shaw about EHH checklists indicating that SSA will no longer be approving Medicare based on positive reads by B readers. Stephanie forwarded your email to her supervisor and me so that we can implement this change at an organizational level at CARD. Since this is an organizational issue, I request that you please direct communication on this topic to me moving forward.

We're happy to do whatever the Social Security Administration asks us to do, so we will plan to implement a change in our processes immediately. Just to be clear, SSA has now changed its position regarding Medicare eligibility based on positive B reads, and CARD should no longer fill out EHH forms for patients with no CARD diagnosis, even if they have a positive outside B-read or CT read. Is that correct? Please send us formal documentation of this change. Since the program began, we have been filling EHH forms out if requested, for either CARD-diagnosed patients or for patients with a positive outside read only. This was based on direction from, and working closely with, SSA staff members who were present in Libby and remained very involved in the early stages of this process following the Affordable Care Act's passage.

Do you know what will happen to patients who have been given Medicare in the past based on a positive outside read only? This is a question that I'm sure will come up when we begin to educate our patients and staff about the change.

Tracy

Tracy McNew, MPA
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